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When a Monopoly Is Not a Monopoly

Contrary to popular belief, the public utilities are faced with a competition that sometimes regulates them through the law of economics even more effectively than do the state commissions. This article points out when and how.

BY RANDALL J. LE BOEUF, JR.

THERE is firmly bedded in the public consciousness the notion that the gas and electric business is wholly monopolistic in character.

This belief is not confined to the householder who finds only one company in a position to serve him within a given territory. The courts themselves to a very considerable extent have predicated the rights of the states or of their public service commissions to regulate such businesses upon an assumption of their monopolistic nature. They have gone so far as to say that unlimited competition in this field should be prevented, as it would occasion a needless duplication of facilities and investment that would result in poor service and high rates to consumers and disaster to the utility companies. As a corollary to this protection doctrine the courts have held that the public must be protected from extortionate rates or poor service through the regulation by some public agency.

Yet reference to court decisions, reports of utility commissioners and publicists all show the universality of

the belief that complete monopoly exists. Mr. Justice Stone of the United States Supreme Court in a late decision made the statement that "the element common to all" cases where that court had upheld regulation "is the existence of a situation where a combination of circumstances materially restricts the regulative course of competition." [1]

LAST year a commission was appointed in New York to study the revision of the existing methods of public service commission regulation in the state. That study resulted in several reports to the legislature and to certain legislative changes. It is interesting to note that even the report of the minority of this commission, headed by Professer James C. Bonbright, (and I refer to the minority report because it claimed that existing conditions were all wrong) was predicated upon the supposition that this was wholly a private monopoly and that the only remedy for the evils claimed to exist lay in certain changes plus the threat and the actuality of public competition. To quote their language:

> "We are convinced that only by establishing a definite and workable standard of rate making, enforceable by an active public service commission, urged on by an enlightened public opinion, and with the probability of public competition in the background if the companies continue their present tactics, can regulated private monopoly in the rendering of the public services continue."

AS we all know, there have been in recent times certain attacks upon the existing system of public utility regulation and claims have been made that the system has not functioned satisfactorily in the public interest. To these charges the companies have replied by pointing with pride to the unique record of the gas and electric industry in reducing rates to the consumer and improving service in the face of mounting costs. Out of this conflict of opinion has come a closer scrutiny of this still infant industry by its managers as well as by the outside critics. As a result, some of the fundamental theories are being reconsidered in the light of present conditions. Perhaps the most important of these is this very belief that the business is monopolistic.

Personally, I feel that the testimony of Mr. Floyd L. Carlisle before the Public Service Revision Commission, indicating the large part that competition plays, was one of the most enlightened contributions to the discussion. It is this aspect of competition in the operation of electric and gas companies that I would like to treat in this article.

If my references are chiefly to the Niagara Hudson Power Corporation or if my thoughts are somewhat colored by the conditions affecting it, the reason may be explained by my greater familiarity with the operating companies embraced within that sys-

[1] Dr. Charles Brown, a member of the New Jersey Public Service Commission, recently made the statement that the reason for regulating business of this character is that "certain commodities, gas, electricity, water . . . must in the nature of things be monopolies."

Dr. Mosher, in his book "Electric Utilities—The Crisis in Public Control," referring to the history of the development of the electric industry said, "It was early demonstrated that quasi-public services in order to be efficient and successful must be carried on under monopolistic or near monopolistic conditions."

tem. Probably the monopoly element is less evident in that system than in any other, but at the same time I believe that the conclusions which may be drawn from its operations are in large degree applicable to other power systems.

While these observations are confined to the electric phase of the business, (we live in an electric age in which the use of this energy and power has a far more important bearing upon the processes of industry and upon our daily lives than has gas), at the same time the conclusions drawn from the electric statistics may be similarly drawn from the gas data, although to a lesser degree.

LET us take, for example, the Niagara Hudson system as an example for the purpose of illustrating a point.

Approximately 15 per cent of the kilowatt hours of electricity sold by this system is sold to householders, farmers, municipalities, and small users. Eighty-five per cent goes to large industrial users. These might be termed the two major classifications of the business.

The bulk of the sales to industry is through the medium of negotiated contracts. The reason for this is that practically every large industry uses energy in a different fashion, and the value is largely determined by the conditions under which it is used.

To illustrate:

Plant A and plant B might each consume 1,000 kilowatt hours of energy in a given period of time. Plant A, however, might take its power continuously and never exceed or fall substantially below a uniform demand of, say, 10 kilowatts. Plant B, on the other hand, might call for the energy only spasmodically and consume the entire 1,000 kilowatt hours within a very short period of time.

In the case of plant A, the utility's capital investment necessary to serve it, (and it should always be remembered that the capital costs are the great factors in determining rates), is much smaller than in the case of plant B, and it is being continuously utilized. On the other hand, the capital investment necessary to serve plant B is idle for the greater portion of the time. Consequently, the rates for the identical amount of energy must vary.

This and other factors make it necessary to work out contracts for most large users that will take into account the peculiar facts surrounding their individual situations.

IT is a fair statement that all of the large industrial power business is competitive.

This is true whether the consumer is served under the terms of a contract negotiated to meet his peculiar

¶ "IN *the field of fuels industrial gas has many competitors. Chief of these are fuel oil, coal, coke, bottle gas, and, in certain cases, wood. In fact, tradition has established so well the use of these other fuels that gas for industrial purposes has the burden of proving its superiority in cost and utility before a manufacturer can be persuaded to adopt it.*"

requirements, or whether he is served pursuant to a filed power tariff. This competition takes several forms.

The first point to determine is whether or not the industry can procure its power more advantageously from some private source other than the local public utility company.

The company may, for instance, be the owner of its own hydroelectric plant purchased in the past at a price that will permit it to develop its power to meet its own requirements at low prices. Accurate statistics are not available but it is believed that if a survey were made of the hydroelectric developments within the state of New York it would be found that the percentage owned by private industries rather than by public utility companies is very substantial. On a stream such as the Hudson river, for example, I would expect that the investigation would show that almost half of the water power development was under the control of nonpublic utility companies. In order to displace power of this character generated by industries themselves the utilities of necessity must offer lower prices and they must overcome the reluctance of an industry to dispose of power generating facilities which are now within its exclusive dominion and control.

ANOTHER form of industrial plant competition may be found in industries which, in connection with their own processes, can generate power as a by-product. The industries which can do this profitably are numerous.

For example, in the case of many of the textile plants such a vast quantity of steam is needed for process purposes that by-product steam may be used through bleeder turbines and otherwise to generate electricity at such a slight additional cost as to be far below the price that the average utility could generate it in even the most efficient plant.

Again, certain manufacturing processes, (as, for example, in the production of cement), burn large quantities of fuel in kilns in which only a portion of the heat is extracted for the process purposes. Frequently it is possible by the installation of steam boilers to convert the balance of otherwise wasted heat into steam for power generation.

STILL another type of competition which is rapidly developing is the production of mechanical power by the Diesel engine which depends upon the utilization of low-grade fuel oils.

In the case of industries which are located at considerable distances from utility generating plants and where other sources of power or fuel costs are high, the Diesel engine may be justified economically in preference to the purchase of power from utilities.

There are also other processes in connection with the operation of blast furnaces where large quantities of gas are produced which is useless in so far as the furnace operation is concerned. In many of the larger plants this gas is collected and is used for the production of power in internal combustion engines.

IN other words, certain industries can produce their power under conditions with which the utilities cannot compete, save, perhaps, in the

The Power Company Does Not Enjoy a Monopoly When—

1: *The consumer can procure his power more advantageously from some private source than from the local utility:*

2: *The consumer can generate his own power as a by-product:*

3: *The consumer can produce mechanical power by the Diesel engine, which operates on low-grade fuel oils.*

way of supplying stand-by service. In another large group of plants, power may be generated so cheaply that sales by the utility company can only be made by bettering the price or offering other inducements. In fact, any large power user, whose power costs materially affect the price of his product, is in a competitive position where he can threaten to produce his own power if low rates are not provided by the utility.

THIS threat of competition is far more potent today than in the past as a brief reference to the following clearly defined reasons indicates.

In the first place, the era of consolidation and expansion of recent years has resulted in larger plants where the economies of the utility central generating plants may be approached more closely than in the case of the smaller factories of the past. The unit cost of power decreases rapidly in proportion to the increase in size of the generating plant. The increased size of modern industrial organization, furthermore, permits the hiring of adequate technical staffs to design and operate their own power plants. The raising of the necessary capital is also easier for the large corporation of today.

In the second place, the competition between manufacturers has likewise become so keen that all elements affecting the cost of their product are subjected to constant scrutiny in the search for additional economies. Needless to say, the monthly power bill does not pass unchecked. Nor do the salesmen for electrical generating equipment of the character adapted to isolated industrial plants lose any opportunity of persuading the manufacturers to produce their own power.

And, in the third place, an increase in competition of this character is caused by the striking technical developments of recent years. By technical improvements in the art of electrical generation, fuel costs have been halved and automatic stoking and control devices have greatly reduced the operating expenses.

THESE examples deal with electricity as a motive force in industry.

Obviously, in the field of fuels industrial gas has many competitors. Chief of these are fuel oil, coal, coke, bottle gas, and, in certain cases, wood. In fact, tradition has established so well the use of these other fuels that gas for industrial purposes has the burden of proving its superiority in cost and utility before a manufacturer can be persuaded to adopt it.

ANOTHER factor of major importance that bears on the question whether industry buys power from the utilities in large amounts is what we might term the "competition of rival process."

Operations may be done electrically today, but tomorrow a new process may be discovered with which the electrical method has to compete—perhaps unsuccessfully.

Take the case of ammonia.

While ammonia is chiefly produced, as a by-product of coal gas manufacture, it is being manufactured by the influence of electrical discharge upon the constituent elements, nitrogen and hydrogen. A manufacturer who uses power for this purpose recently approached the local power company and complained that he was no longer able to compete with the chemical process at the rates charged for power. A thorough investigation showed that a reduction in rates for his electric power, even to the point of making a gift of it, would still leave him with a higher production cost than his competitors who use the chemical process. Naturally he was forced to step out of the market.

NATURE, herself, may be a competitor of the utility companies. Witness the use of gas and electricity in refrigerators that supplant natural ice; the electrical production of carborundum and graphite in place of grindstones, whetstones, pumice, and emery; the manufacture of artificial silk or rayon from wood pulp in place of natural silk; the production of nitrates electrically in place of natural fertilizers.

Another case of an invention which affects the power business is furnished by the private automobile and the bus.

In the past, the local trolley and interurban lines were large users of electric energy; today, many trolley lines are abandoned while others limp along in the hands of the receivers. Whether the electrification of the railroads will even the balance by displacing the steam locomotive affords an interesting speculation and another phase of competition.

A THIRD major form of competition in the industrial business might be termed "place competition." By this I mean the ability of manufacturers to move to other localities to procure lower power rates or other more favorable conditions.

In a certain limited class of industries the power costs are the all-important factor in determining the ultimate price of the product. Chief examples of these are the electro-chemical, electro-metallurgical, and paper industries. Companies of this type must not only have cheap power but in order to meet rival competition, in many cases, they must move to the locality affording the cheapest power.

At Niagara Falls, for example, great industries have developed in reliance upon the very cheap power

that is available there; in recent years, however, the maximum amount of water which the power company is permitted to utilize under the treaty with Canada has been reached. It has been apparent for some time that unless the treaty is changed to permit additional diversion for power purposes industries of this character realize that their expansion must occur at other places where cheap power obtains.

RECENTLY there has been a proceeding before the New York Water Power and Control Commission prompted by the desire of that body to impose a tax upon certain of the power generated at Niagara Falls of $5 a horsepower. Under the power contracts with the industries located there, it is agreed that any tax of this character is passed on to the consumer. As a result, these industries sent their representatives to the hearings before the commission to protest the imposition of such a tax upon their operations; they pointed out that they located there because of their reliance upon cheap power, and they also demonstrated the economic folly of such a proposed tax.

I refer to this case because at the time tangible proof was given of the competitive features of other localities that were tending to attract industries away from Niagara Falls, at least to the extent of additions to their plants.

In this case, the representative of a large carbide company, one of the pioneer plants at the Falls, testified that it had built plants in Norway in order to take advantage of the extremely low power costs that exist there and that the charge which the state was threatening to impose was roughly equivalent to the transportation cost of shipping a ton of its product from Norway to this country. In addition, he stated that his concern is engaged in constructing a very large combined hydroelectric and steam development in West Virginia where the locality permits the use of coal practically at the mouth of the mine.

Another concern, in the same proceeding, pointed out that up to 1916 all the crude abrasives produced by it were made at Niagara Falls, whereas, today, only 35 per cent are manufactured there; he claimed that a substantial state tax, in addition to the existing power rates, would possibly require the location of its furnace plant in another state.

A LARGE manufacturer of chemical steel alloys gave testimony that it had two major plants; one was located in Pennsylvania and one at Niagara Falls. He stated that all costs at the Pennsylvania plant were substantially lower than the equivalent costs at Niagara Falls, with the single exception of the electrical energy, and that if the cost of energy at the Falls should be increased the sole rea-

¶ "WHILE *the economics are all in favor of the purchase of such electric energy from the utilities, there is ever present (as, for example, large office buildings), the possibility that the customer will install a small electric plant of his own.*"

son for the company's maintenance of its plant at that point would disappear.

These incidents show the extreme sensitiveness of industry of this character to power costs. It means that in a state where power rates are very low, but other factors such as taxes, stringent labor laws, distance from market, and other factors tend to increase manufacturing costs, that any industry which builds a new plant or expands an old one must consider all of these elements—particularly in a community where these other considerations must be taken into account and where power rates must be low in order to offset them.

So much for the competitive nature of industrial power rates. But what about the other 15 per cent of the business?

In the Niagara Hudson system, (which we have been using as an example), in the year 1929, approximately seventy-four million kilowatt hours or 1.13 per cent of the total sales were sold for street and highway lighting, whereas approximately seventy-six million kilowatt hours or 1.18 per cent of the total sales were delivered to municipalities for lighting of public buildings, municipal pumping, municipal distribution, and other purposes.

This business is customarily handled by negotiated agreements. Certain municipalities have hydroelectric and steam-generating plants of their own and, in some instances, they use electricity in such large quantities as to invite competition for the contract.

Apart from this, however, there are other factors which insure that the municipalities will secure fair treatment from utility companies. For example, there is the control which the municipality has over taxes and over franchises. There is also the very real desire on the part of the utilities, in the interests of their general public relations, to conduct their dealings with municipalities upon the highest possible plane.

During that same year, 1929, four hundred and seventy-eight million kilowatt hours, or 7.35 per cent of the total, were sold for commercial purposes. This includes the supply to apartment houses, hotels, stores, theatres, and similar customers. While the economics are all in favor of the purchase of such electric energy from the utilities, there is ever present (as, for example, large office buildings), the possibility that the customer will install a small electric plant of its own. Utility rates and service must take this factor into account.

How about the sales of electricity to householders and farms? Last year, this business amounted to approximately three hundred and fourteen million kilowatt hours, or 4.82 per cent of the total of the system's sales.

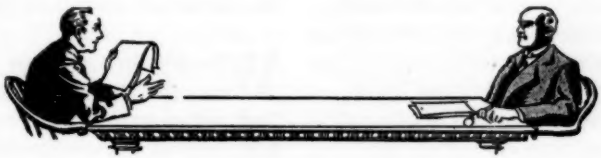
It is here that the problem of public utility regulation centers. Here, obviously, competition plays its smallest part, yet it is ever present to an appreciable extent.

In some localities the gas and electric companies are controlled separately, and there may be competition between the two for lighting, cooking, and heating purposes. Again, in the case of house heating, gas and

electricity are generally at a competitive disadvantage with coal and fuel oil; furthermore, in isolated localities, wood, coal, kerosene, and bottle gas may be utilized to advantage. For these and other reasons it is fair to state that there is an element of competition present in this phase of the business, but it is not a controlling element in the situation of the usual domestic user.

Between the domestic ratepayer and uncontrolled monopoly stand shields of protection. One is the ratepayer's legal right to invoke the agencies of the state and the courts to insure that he is charged reasonable rates and no more. The other, more intangible perhaps but equally real, is the desire on the part of the enlightened utility companies to see that service is of the highest order and that these domestic consumers are given the most favorable rates that the facts will justify.

This attitude is based not only on the practical desire of the utilities to maintain satisfactory relations with its public, but also on its realization that it is a wise business policy if the consumer knows that his rates are reasonable and that the utility company is treating him fairly. Knowledge of this kind tends to increase the ratepayer's use of the utility's services, and thereby increase the revenues of the company and pave the way for future rate reductions.

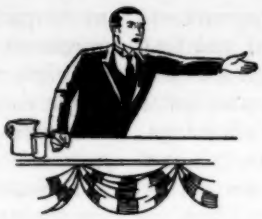


What the State Commissioners Are Thinking About

TRENDS in regulation are taking new and significant turns. The increasing evidence of the purpose of some of our legislators to extend the power of the Federal Government into the states; the rise of the motor bus as a competitor of both the street railways and the steam railroads; the injection into politics of state and Federal power development projects; the extraordinary growth of the natural gas industry—these are but some of the timely and important economic and political problems that are confronting the state commissioners.

In the next issue of this magazine will be published an analysis of the outstanding opinions expressed toward these problems at the annual convention of the National Association of Railroad and Public Utilities Commissioners—an important gathering of the commissioners from practically every state in the Union, which came to a close just as this issue of PUBLIC UTILITIES FORTNIGHTLY was going to press.

The next number will be out December 25th.



Why Government Operation Is Political Operation

What the proposed transfer of the management of public utilities from business men of proven capacity to politicians would mean both to the ratepayer and to the taxpayer.

By PAUL TOMLINSON

When enthusiasts raise their voices in favor of what is called government ownership of utilities, one has little choice but to assume that their motives are sincere and their intentions good.

On the other hand, it is the privilege of those who are not so sure that government ownership is a good thing to ask these enthusiasts if they have thought the matter through to its logical conclusion. When they think of government ownership and operation do they see a picture of able, disinterested, zealous individuals operating the utilities in the interests of the consumers?

Doubtless they do. There are other people, however, somewhat more cynical, who see in government ownership and operation an opportunity for politicians to place their friends and henchmen in positions which they are not qualified to fill, either by training or ability; they see poorer service to the consumer; they see a threat of increased taxes resulting from unenthusiastic and inefficient management.

We in this country have been taught to believe, and rightly, that our economic and social advance has resulted from individual need and ambition stimulated by individual enterprise and initiative. This is the land of individual opportunity. It is also a land of healthy competition, where the best man wins, where service is rewarded with customers, and efficient management with profits.

Put the government in charge of business, and the individual becomes a mere automaton; initiative and ability fail of adequate rewards, and with the plums falling into the laps of political creditors all incentive to effect improvements and economies disappears. What do these people care about service?

What especial regard have they for

economical operation? What interest do they take in increasing efficiency?

Let those who advocate government ownership and operation of business consider our government's adventures in shipping and railroading. Let them compare the service rendered by our privately owned railroads and utilities with that given by similar enterprises in Europe, government owned and operated. Let them consider our government's pitiful attempts to control the price of agricultural products. The government has no place in business; the fathers of this country recognized this fact, as have our outstanding presidents from Washington's time down to the present.

Calvin Coolidge once said of government ownership and control:

"Broadly extended this is communism," and no one has ever questioned Mr. Coolidge's ability to think straight economically. Many of our legislators who protest most loudly against communism and the "Red" menace will nevertheless advocate government ownership and operation of our utilities.

Is it possible that the greatest threat of communism comes from our own well-meaning but misguided fellow citizens who think that government appointees can run a business better than men who have grown up in business and won their way to the top by hard work and proven ability?

ECONOMICS will not mix with politics. When one of our Senators urges government development and operation of Muscle Shoals on the grounds that otherwise private capital will never spend money on some of the sites there, he is unintentionally putting forward a powerful argument against the very thing he is advocating. What he says, in effect, is that private capital will go into something only if it promises to be profitable, but that the government has no such hesitation so far as the taxpayers' money is concerned. This gentleman often talks about the rights and interests of our people. Does he understand how highly technical the utility business is? Does he think that if it comes under government management it can ever escape political control? Can he mention any instance of economic good accruing to the country from politics?

We hear loose talk about the "power trust," but in the opinion of a recent president of the National Association of Manufacturers:

> "Of all the trusts that menace the future of our country today the political trust looms as the most sinister; and in this intemperate day of inquiry into the affairs of others, it is high time that the people are getting together and appointing a committee to investigate it."

Government should concern itself with statesmanship, not with business. Most state Constitutions, like the Federal Constitution, provide that no debt shall be incurred except to pay existing debts, to suppress insurrection, repel invasion, or defend the state in time of war. In other words, the state's money and credit may be spent only for purposes of government and are not available for business undertakings.

MUCH of the recent agitation for state ownership relates to water power, and the governor of New York state evidently is gambling much of his political future on such an issue.

Can he expect the people of his own state and of the country to back him with their votes, when they see how the state of New York persists in the business of operating the Erie Canal system at a huge annual loss? Can they expect that state operation of water-power systems will be any less expensive for the taxpayers?

Both North and South Dakota have made well-remembered entries into business, with disastrous results, and it is interesting to note that efforts to have state governments take over water powers and other utilities have failed in Oregon, Nebraska, California, and in other states.

The people are learning, if our legislators are not.

MANY municipalities, of course, have engaged in the businesses of water, gas, electricity, and transportation. Seventy-five per cent of the towns of 5,000 population and over own their waterworks, but the water business is a simple one; there is no substitute for water, and no competition in supplying it.

The gas business is growing by leaps and bounds, but less than 2 per cent of manufactured and natural gas is furnished by municipally owned plants.

The same percentages apply to municipally owned street car lines.

Private ownership dominates the electric field; less than 5 per cent of the total electric production is from municipal plants, yet it is significant that in order to produce this 5 per cent the municipal plants require approximately 10 per cent of the fuel used. Private companies with large interconnected systems can offer rates for service which are actually lower than the unit costs of producing and distributing electricity by most municipal plants; in the southeastern states, for example, where a few years ago there were hundreds of municipally owned plants, there are today a comparative handful.

In Kansas City it was discovered recently that the municipal plant which was supposed to be operating at a profit was in reality running at a loss when proper account was taken of depreciation and other items which are carefully and faithfully recorded by any well-managed private corporation. Several projects for city-owned hydroelectric plants in the western states have become so involved as to force the municipalities to abandon them.

In Cleveland a private plant has extended its business rapidly, while a competing municipally owned plant has shown no growth at all.

Cases of municipal failure and private success could be cited so indefinitely as to cause one to wonder if after all our legislators really believe in the efficacy of government ownership.

Can we suspect that political ownership is what they really are after? Certainly with all the examples of governmental failure before them they cannot expect seriously that further experiments can turn out to be anything but failures too.

HAVE the advocates of government owned utilities considered carefully the effect of such ownership on taxes? Government property is tax-exempt; private property supplies the money raised by taxation. It follows,

Why Government Ownership Rushes In Where Private Ownership Fears to Tread

"WHEN one of our Senators urges government development and operation of Muscle Shoals on the grounds that otherwise private capital will never spend money on some of the sites there, he is unintentionally putting forward a powerful argument against the very thing he is advocating. What he says, in effect, is that private capital will go into something only if it promises to be profitable, but that the government has no such hesitation so far as the taxpayers' money is concerned."

therefore, that every property taken over by the government puts an additional tax burden on what remains in private hands. Public utility companies pay taxes to the Federal Government, to the state governments, and to the local municipalities, taxes which will average 10 per cent of their gross incomes. If the governments, local, state, or Federal, take over these companies, who is going to make up for the loss of revenue?

The answer is clear, while the obvious comment is "and how!"

UNDER municipal ownership service is of whatever kind the city government chooses to give, and the customer has practically no chance of redress. Rates charged are based usually on political exigencies, rather than figured scientifically. When a municipally owned utility requires capital, it, in effect, mortgages all the property in the city, and city bonds, being tax-exempt, can generally be sold on more favorable terms than those issued by a private enterprise. Experience has shown, however, that this apparent saving is usually absorbed by a greater number of employees per unit, and higher wages paid for political allegiance.

Under private ownership, and in spite of advancing prices for practically all commodities, utility rates have not advanced proportionately; in many instances they have shown an actual decrease. One reason for this is the large interconnected system which has been developed, and is still being developed, under private initiative and enterprise.

Can anyone picture several municipalities coöperating in order to cut the cost of the products of municipally owned utilities?

Would San Francisco ever coöperate with Los Angeles, no matter how logical such coöperation might be?

Would Republican Philadelphia go in with New York, governed by Tammany Hall?

Would economics ever prevail over politics in dealings between cities or states?

How long can sound business methods stand out against politics in any governmental undertaking involving the handling of money?

It may sound cynical, but if private business in this country conducted its financial affairs as our local, state, and Federal Governments conduct theirs, there would soon be no businesses to conduct.

A GOVERNMENT can operate at a loss, and make it good by increasing taxes; a private business operated at a loss soon ceases to exist. Hence it is that private ownership becomes efficient, forward-looking, economical, and stresses service. It must. A governmental business has to be none of these things, and seldom is.

The fact remains, however, that economic laws are stronger than those made by men, and when men try to substitute something in place of economics the penalty is sure, and usually swift.

Experience teaches that government ownership means political ownership, and politics is as far removed from economics as Baffin Land from Anarctica.

It would be a sorry day for the United States of America, and for her people, if government ownership of utilities ever made any serious headway.

It Is Reported That—

A LAW in Chicago requires the holder of a street car transfer to tear it up before throwing it away.

To qualify for a job as telephone operator in Jerusalem, the applicant must speak eleven languages.

CHICAGO is the greatest railway centre in the world and the greatest waterway centre in the interior of any continent.

IN Georgia the law requires that a utility operating more than five stores in the state, pay a chain store tax of $50 a store.

THE American citizen spent slightly more than 2 cents a day each for candy, in 1929, and slightly less than 2 cents a day for electricity in his home.

THERE are state laws against "hitch hiking" in Maine, Minnesota, New Jersey, and Wisconsin, and a Federal law covering the District of Columbia.

CUBA is planning to light all of the public buildings and parks in Havana with electric power created by burning the 250 tons of daily rubbish that is now dumped into the sea.

THE illumination of a baseball park in Des Moines, Iowa, for night-time ball playing, tricked the hens on a neighboring farm into laying more eggs during what they considered daylight hours.

The State Commissioners Go Into Conference

For the forty-second time in as many years members of the Interstate Commerce and the State Railroad and Utility Commissions from all sections of the country have met and considered railroad and utility regulatory problems. The November, 1930, convention of the National Association of Railroad and Utilities Commissioners was held in the historic city of Charleston, South Carolina. Thirty-eight states were represented.

The organization, originally formed to promote coöperation between the federal and state authorities, has kept that aim in view. The need for this coöperation has not lessened as the regulatory powers of Interstate Commerce and State Commissions have been extended. So this was one of the main things stressed at the convention.

At the same time the state commissioners showed themselves to be emphatically in favor of preserving state's rights against any encroachment of federal powers over matters of strictly local concern.

They would apparently like to have the Federal Government regulate utility operations which cannot be reached by the states, a comparatively small portion of the field, but are adamant against federal action where ratepayers can be adequately protected by the authority of the state commission authorities.

The fear of the state commissioners is that once the Federal Government steps in it will dominate, as has been the case in the regulation of the railroads. That explains their vigorous opposition to the Couzens Communication bill.

The state commissioners, however, favor the interstate regulation of interstate bus carriers. The Parker-Couzens Bus bill was endorsed with the statement that the endorsement does not extend to certain amendments.

The state commissioners are also opposed to the recapture provision of the Transportation Act, which they regard as economically unsound. They do not like the provisions of the Howell bill which would so modify the original act as to make the United States Government, as some persons assert, part owners of the prosperous railroads. Neither are they in favor of requiring the Interstate Commerce Commission to revalue the railroads from time to time. They favor changes in the law which would relieve the commission of this responsibility but without in any way diminishing its power to keep informed as to the capital investments of the carriers and as to changes in their property. These were the dominant notes of the meeting.

Henry C. Spurr

The Effect of the Recent Elections on Utility Securities

How the financial interests look upon the "tinge of pink" in the November returns, and the likelihood of a period of more stringent regulation that will bear upon earnings.

By PAUL WILLARD GARRETT

WHATEVER interpretations you put upon it, the election this year serves notice of sweeping gains in the battalion of voters who favor tightening regulations on utilities.

Try as you will you cannot escape a conclusion unpleasant to the power interests; the election went against the utilities. Candidates everywhere who stood against these corporate institutions gathered in the victory by buckets heaped with votes. Some were Republican; some were Democratic; some were wet; some were dry. But where they were against the public utilities that, apparently, was enough to elect the candidate.

Let us put it differently. Like it or not the fact is that no single important opponent of what these gentlemen call the "power trust" was black-balled in this amazing election of the Autumn of 1930. It is not a fact that can be sniffed out easily. We must proceed rather to acquaint ourselves with it.

Exactly what does this election uncover that we did not know before?

Is sentiment swinging away from the public utilities? Are we now witnessing the beginning of an era of regulatory atonement for early sins in the utility field such as followed the Fiske-Drew-Morgan-Vanderbilt-Gould era in railroad speculation? And if so, what is to be the effect on the market in public utility stocks of this tightening rein of control?

This tinge of pink in the election returns casts its warning signals, but on intelligent examination it seems more like a gentle rebuke than the gathering flame of radicalism.

NAMED in the order of their importance, votes in this mid-presidential year were built on (1)

business depression, (2) liquor, and (3) stricter utility regulation.

Essentially, it was a political struggle, not economic. Dissatisfaction with business as it is and liquor were emotions that in one way or another sought expression everywhere. No more than a dozen states developed a power issue.

Boiled down to its essence, here is what the vote showed in states where the election had a power element:

ARIZONA: George W. P. Hunt, Democrat, was elected governor. In his campaign, he advocated more militant opposition to the Hoover Dam project.

CALIFORNIA: Los Angeles defeated the $13,300,000 bond issue for extension of the Municipal Light and Power Bureau system. Of the amount asked, $2,000,000 was for the purchase of rights of way between Los Angeles and the Hoover Dam.

By a vote of 80,700 to 64,000, San Francisco granted the Market Street Railway Company a 25-year operating permit in exchange for expired and expiring franchises. The operating permit can be revoked at any time by the city's purchasing at a fair value, with no going concern or like intangibles to be claimed by the company. The proposal for a public utility commission to handle the city owned utility properties of San Francisco was defeated by 37,600 to 73,400.

COLORADO: Edward P. Costigan, Democrat, was elected senator. In his campaign Mr. Costigan was critical of alleged utility activities in Colorado politics.

MASSACHUSETTS: Joseph B. Ely, Democrat, was elected governor. During the campaign, Mr. Ely declared that he favored a law making it easier for the municipalities to acquire ownership of gas and electric plants when they believed they were not securing fair rates from private companies. He further stated that he believed the marketing of the shares of holding companies jeopardized the success of regulation in the state of operating companies, that he favored rates based upon the so-called Massachusetts theory of "prudent investment," and that he saw no solution of the problems confronting the Boston Elevated system except public ownership. The Democratic state platform had a plank favoring "prudent investment."

MONTANA: Senator Thomas J. Walsh, Democrat, was reëlected.

NEBRASKA: Senator George W. Norris, Republican, author of the Norris Muscle Shoals bill and the outstanding advocate of public ownership and operation of utilities, was reëlected.

The initiated bill backed by the League of Nebraska Municipalities which permits councils in cities and towns owning electric plants to make extensions and to pay for plants by pledging future earnings was adopted. Another provision in the bill is that no publicly-owned plant may be sold except upon approval of 60 per cent of the voters.

NEW YORK: Governor Franklin D. Roosevelt, Democrat, who has advocated development of hydroelectric power of the St. Lawrence by a state agency, was reëlected. The state legislature, however, remains Republican by a narrow margin.

OHIO: George White, Democrat,

was elected governor. During the campaign Mr. White severely criticized the Ohio Public Utilities Commission, charging that it had delayed disposing of rate cases involving millions of dollars. He declared that, if elected governor, he would see that the commission's docket was speedily cleared of old cases.

Gilbert Bettman, Republican, was reëlected attorney general. During the past term he represented Ohio in the successful suit in the United States Supreme Court to compel reduction of diversion of lake water by Chicago.

A proposal for a municipal electric plant at Portsmouth, to compete with the Ohio Power Company, was defeated by 5,700 votes.

OREGON: Julius L. Meier, independent candidate for governor, was elected and the amendment to the state Constitution, permitting the establishment of public power districts was adopted.

Mr. Meier was nominated by advocates of public ownership of utilities when the Republican candidate for governor, George W. Joseph, nominated at the primary, who was also a believer in public ownership, died, and the Republican State Committee nominated Philip Metschan, not a supporter of public ownership.

PENNSYLVANIA: Gifford Pinchot, Republican, was elected governor of Pennsylvania. During the campaign Mr. Pinchot severely criticized the present public service commission and advocated substitution therefor of an elected fair rate board. He also voiced various criticisms of alleged practices of some utility companies.

TENNESSEE: Representative Carroll B. Reece, principal opponent in the house of the Norris Muscle Shoals plan, was defeated by O. B. Lovette, independent Republican.

WASHINGTON: The bill authorizing the formation and operation of public power districts which was sponsored by the Washington State Grange and submitted to the voters at a referendum was adopted.

WEST VIRGINIA: The election in West Virginia resulted in the state senate's remaining Republican, while the Democrats won a majority in the house. During the campaign, the Democratic candidates emphatically criticized the 1929 State Water Power Act and charged the Republicans with being too friendly to the utility interests.

WICONSIN: Philip LaFollette, Republican, brother of the present Senator LaFollette, was elected governor of Wisconsin. Mr. LaFollette during the campaign expressed some criticism of utilities and is expected to favor some measure looking to state development of hydroelectric projects.

IN combing through these election returns we must not mistake these gains as all direct mandates from the people against public utilities.

That Franklin D. Roosevelt was elected governor of New York purely or even primarily on the power issue nobody will contend, and yet his election puts into prominent political position for another two years the name of a man widely known for his liberal views of power control.

Even in Pennsylvania the Mellons gave their support to Gifford Pinchot, victorious Republican candidate for the governorship, and the election of a veteran champion of stricter utility

The Recent Downward Trend in Utility Stocks Merely Followed a General Movement

"ALL the election did was to intensify a bear movement in stocks that had been gathering momentum since September 10th this year and that even then had been running a full year. . . . Wall street is not always right in its judgments, but Wall street sees no very near threat to the future earnings' growth of utilities in stricter regulation."

regulation in that conservative state does not mean that power there was the paramount issue.

The Norris victory in Nebraska returned to the senate a man who has sponsored legislation distasteful to the power and light industry but power in that agricultural state is not the paramount issue that one might suppose from an examination of the congressional records any more than foreign politics is a paramount political issue in the state of Idaho whence comes Senator Borah.

In Los Angeles the power bond issue was voted down. In Colorado the election of Costigan will add a strong unit to the Norris-Pinchot-Howell group. It is possible that Julius Meier in Oregon will attempt to put forward public ownership ideas, but whether these make any deep impression in that western state depends on the complexion of the legislation. Meantime the Couzens bill for Federal control will come up for discussion in December and will enable us to measure more accurately the strength of the forces for and against more regulation by the central government.

DOWN through the years the bark of these politicians has been worse than the bite. But Wall street did not, on hearing the election returns, find great solace in that historic truth. It heard only the bark. It began almost immediately to sell public utility stocks. But since it sold industrial and railroad stocks with increased restlessness also, Wall street did not in unloading utilities this month register simply its alarm over regulation. All the election did was to intensify a bear movement in stocks that had been gathering momentum since September 10th this year and that even then had been running a full year.

Wall street is not always right in its judgments, but Wall street sees no very near threat to the future earnings' growth of utilities in stricter regulation. Even today the market in public utility stocks is standing up better than that in either industrials or railroads viewed in a broad way.

A full three years of the Coolidge-Mellon-Hoover bull market is rolled away in the adjustment of the last year and market-wise we are back where we were in 1927. Interesting

it is to note that the railroad stocks which had participated less than any other major group in the market's rise have lost more than any other. Railroad stocks now are down to the low-level witnessed since November, 1926. Industrials are back to their April, 1927, level.

BUT we need go back only to December, 1928, to find a position in public utility stocks corresponding to the present. That is to say, investors the country over do not believe that they need to go back as far in the market for utilities to find solid ground on which to stand as in other groups. This bear market has set utility stock prices back but two years. It has set industrials back three and one-half years. It has set the rails back four full years.

One reason that the recent decline in utilities seems so devastating a market episode is that previous to the 1929 collapse in speculation our public utility stocks had climbed to heights not contemplated even by the wildest dreams even of the optimists back in 1926 who witnessed a similar fall in utility security prices.

Taking 1926 as 100 let us see to what heights various representative stocks had climbed by September, 1929. Standard's list of 337 industrials had risen to a new high peak of 218.9. Its list of 33 railroad stocks had risen to 173.5. But its list of 34 representative public utility shares had risen to 330.4.

NOW let us look at the situation from a little different angle. At the high point for stocks in 1929 the better industrials were selling to yield 3.15 per cent, the better rails 3.84 per cent, and the better public utility stocks only 1.65 per cent.

What the recent adjustment in the stock market has done is to iron out many of the disparities between groups and to restore a more reasonable level of yields, enabling investors to purchase even the good public utility stocks without sacrificing so much in yields.

That our public utility companies in years to come will be subjected to stricter regulation than in times past and that in consequence the market in public utility securities will undergo such drastic readjustments as come to the railroad shares are premises that do not necessarily follow. That is to say, it is altogether reasonable to suppose that with the continued growth in the power and light industry the number of points of contact with state or federal regulation will multiply but that the public utility securities will thereby lose their present popularity with investors or that through these regulations earnings will be driven to a starvation level are conclusions we cannot reach from any intelligent survey of the situation.

REASONING by analogy with the railroads is the easy but not very accurate road to the conclusion that market-wise public utility securities in this country have reached the apex of their careers. Such a conclusion certainly is more difficult to hold in the present market where even the public utility securities have been conspicuously deflated from their peak levels of a year ago than when these same leading stocks were selling in the open market at 20 and 30 and 50 and 100 times earnings.

	Revenue	Kilowatt Hour	Per Kilowatt Hour
1914	$22.25	268	8.3
1918	22.50	272	8.28
1919	22.55	293	7.7
1920	25.25	339	7.45
1921	25.65	347	7.40
1922	26.50	359	7.38
1923	26.50	368	7.2
1924	27.25	378	7.2
1925	28.90	396	7.3
1926	28.25	404	6.98
1927	29.20	429	6.80
1928	30.10	459	6.55
1929	31.02	502	6.18

HOW THE DECLINE IN RESIDENTIAL CHARGE PER KILOWATT HOUR HAS INCREASED DEMAND AND REVENUE

Fortunately for power and light investors the great era of railroad development in this country preceded the era of public utility development. It enabled the utility industry to profit from the mistakes of the railroad organizers. It enabled the power and light executives years ago to observe that a railroad policy based on the imposition of a rate schedule designed to gouge from shippers "all the traffic would bear" was ruinous. It enabled the public utility industry to observe that a "public be damned" policy was not good business. With this rich background before them, and in keeping with the spirit of the era they represented, the leaders of the public utility industry early in their development began courting public favor through the sale of securities to the public, through reductions in rates, and through an attitude generally sympathetic to public utility consumers. That their record is without a blemish nobody will claim. That the public utility industry in its great era of expansion has written a history clean indeed when set in contrast with the records of the railroads in their expansion era no honest judge can deny. Interesting it is to observe that in the last fifteen years of increasing costs for most commodities the rate for electrical energy has been consistently reduced through a recognition on the part of the industry that its own best interests lie in that direction. Far from inflicting on consumers "all the traffic will bear" the industry, generally speaking, recognizes it as good business to reduce the cost of energy and with these reductions over a period of years it has observed a simultaneous expansion in the demand.

The table on this page shows the consistent decline in the residential charge per kilowatt hour and the simultaneous increase in demand that this policy has stimulated.

Unfortunately, the benefits in increased good will for the electric industry as a result of this consistent reduction in rates have been offset in part by an expansion in corporate structures. One holding company is superimposed on the operating company one or two or three or

four or even five layers deep, until the average man begins to wonder whether the reduction in rates means all that it seems. His attention in recent years has been somewhat diverted from this underlying trend in rates to the spectacular enhancement in utility security prices. It has left his mind disturbed. It has left him with the impression that perhaps there is an ethiopian in the woodpile whom he cannot see.

As time goes on the industry should give more attention to a simplification of its corporate structure or to the education of utility consumers along the lines of high finance in the industry. There are certain points in connection with the regulation of the electrical companies that seem to be overlooked by those who contend that the public utility is a monopoly and, therefore, free from the competitive elements present in most lines of endeavor. This "monopolistic" privilege is cited as guarantee that definite rates of return are assured to utilities and that in consequence the utilities should not object to stricter regulation.

To an extent that is of course true, but what many overlook is that the utility business, after all, meets competition of a different sort. It does not meet the competition of another company operating in the same area. It does distinctly meet the competition of alternative methods of using power available to large users. Such prospective consumers of power as factories, mines, and quarries instead of purchasing energy from the public utility company direct have the privilege of installing local generating facilities. These local installations take the form of boiler and engine equipment, actuating turbo-electric sets and Diesel engines driving generators. The cost to which any particular prospective electric customer can generate power himself establishes pretty definitely the price that must be met by the company.

It is just as essential that the electric company meet this competitive price of power, taking the large industrial power load on its lines, as it would be for the company to meet a competitive price set up by another power company operating in the same zone. Only through this use of power by factories and bulk users is it possible for the company to maintain a price level to domestic users that is reasonable and acceptable. But even within the field of domestic use the power and light company meets competition notwithstanding the apparent "monopolistic" privileges of the company territorially. It must compete with the gas refrigerator, the ice box, the gas range, oil, and the laundry. It has been estimated by one authority that of all the kilowatt hours sold something less than 20 per cent may be considered as free from competition in the sense here set forth.

Granting that the industry must as time goes on expect an increasing amount of regulation, investors in power and light securities need not fear the fate of railroad investors in recent years for the reason that so far as we can observe the growth of the electric industry is nowhere near through. This element of powerful underlying growth that still persists promises to maintain for good power and light securities a margin

Population increased by	15,000,000 or 14%
New domestic electric customers	11,229,000 " 135%
Increase in total energy consumed by domestic customers	6,989,000,000 kw. hrs.—250%
Increase in total gross revenue from domestic customers	396,178,000 " " 189%
Annual electric bill for average domestic customer increased from	$25.25 to $31.02 or 23%
Average quantity of electricity used per domestic customer increased from	339 kw. hrs. to 502 kw. hrs.—48%
Average price per kilowatt hour for domestic service decreased from	7.45¢ to 6.18¢ or 17%

HOW THE POWER AND LIGHT UTILITIES ARE GROWING

of earnings protection notwithstanding regulatory measures of a restrictive character.

As a measure of this growth, note (shown above) the table of fundamental changes in this country between 1920 and 1929 affecting the power and light industry.

THE answer to the question how the market in public utility securities will be affected by a movement in this country toward stricter regulation is made appreciably easier by the decline in recent months of the power stocks to more reasonable levels. We can never see into the distant future. So long as power stocks were selling for 30 and 50 and 100 times estimated current earnings we were in effect looking far into the distant future and banking on the proposition that the utilities down through the years to come would continue to multiply their earnings at the old ratios.

We have not yet witnessed in this country any very definite signs of radicalism in utility control. The utilities themselves have forestalled that by their sensible behaviorism. But what the more distant future will be we can only surmise. At least it is enough for the present to expect that the reasonable promise for continued growth in the industry will for some time to come justify investments in good utility securities at the level to which they have fallen in these late 1930 markets.

The Staggering Cost of the Valuation Doctrine

"THE valuation doctrine has hampered and embarrassed and grieviously delayed regulation to an extent which has given rise to serious and warranted concern. If the total amount which has been spent upon railroad and utility valuations could be ascertained, if the total time consumed in wrangling upon this subject before commissions and courts could be totaled, if all of the lawyers and so-called experts who make a living, and often a fat living, from this hurly-burly could be placed in line, I believe that the country would be staggered by the exhibition."

—HON. JOSEPH B. EASTMAN,
INTERSTATE COMMERCE COMMISSION.

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

ELLISON D. SMITH
U. S. Senator from South Carolina.

"I belong to a body that produces quite a quantity of natural gas."

An editorial in "The Argonaut."

"Utilities still represent an abstraction politically to the average voter."

FLOYD GIBBONS
Journalist and lecturer.

"Hardly any activity we civilized humans indulge in would be possible without gas."

SMITH W. BROOKHART
U. S. Senator from Iowa.

"The verdict of the people in the election was in favor of government operation of Muscle Shoals."

ROSALIE LOEW WHITNEY
New York attorney.

"It is entirely possible a 'racketeer king' may arise in a few years and control the business of the country."

BERNARD J. MULLANEY
Vice-president, Peoples Gas Light & Coke Co.

"Socialization is the highbrow term for government ownership and operation of business."

HOWARD BRUBAKER
Columnist

"The Postal Telegraph Company will sell theater tickets at its offices. Just as if they were a lot of drug stores."

MATTHEW S. SLOAN
President, New York Edison Company.

"I do not believe that our rate making can take into account so-called rich or poor, as such, or be based upon supposed ability to pay."

HERBERT HOOVER, JR.
Radio technician.

"Every era of modern transportation has shown that the advent of the new carrier has helped the others, for they have been feeders, one to the other."

CHARLES EDWARD RUSSELL
Socialist and author.

"The radio is a great educational force . . . and should be as much a matter of public control as are the public schools."

NORMAN THOMAS
Socialist leader in New York.

"In every state where it was an issue, the people voted for the critics of public utilities; they preferred the critics of public utilities to their friends."

GIFFORD PINCHOT
Governor-elect of Pennsylvania.

"Neither in my speeches nor in my platform have I attacked any industry, utility, carrier, corporation, or other interest which is doing the right thing."

J. PAUL KUHN
Of the Illinois Commerce Commission.

"In the operation of public utility properties the trouble comes, not from the fundamental rules as laid down, but from the practice of the utility in abusing the application of those rules."

MORRIS LLEWELLYN COOKE
Economist and publicist.

"It appears to be as much a part of the American tradition to know what a car rate or a street car fare ought to be as it is to know how to handle a squirrel gun, to have well-shined shoes, or to live in a house with a tight roof."

FRANK L. DAME
President, North American Company.

"Both of these states (New York and Pennsylvania) have had previous administrations by governors just elected, and the progress, the good service and the investment security of the public utility industry was in no way hampered."

From a statement by the Harriman National Bank & Trust Co., N. Y.

"Those who pay taxes for the maintenance of the highways are bewildered with the fact that they are used by these nontaxed corporations who pay nothing for the highway's maintenance and are, more or less, 'racketeers' in their particular line."

MARTIN J. INSULL
President, Middle West Utilities Company.

"We seem to forget that 1929 was a year of the greatest business the country ever knew and far above a normal basis. It reached its peak about the middle of the year. So far this year, therefore, we have been comparing with a rising curve. From now on it will be different and our business psychology should improve."

HEYWOOD BROUN
Newspaper columnist.

"Governor Franklin Roosevelt (of New York) was reëlected by an enormous majority. But he would be going quite a bit off the track if he undertook to assert that any great number of this huge avalanche of votes came to him because the citizens of New York wished to express approval of his policy in regard to water power or unemployment."

A NEW TEST OF AN OLD ECONOMIC LAW FOR

Regulating Car Fares

An experiment with a ride for the price of a stamp

THE street railway business needs more off-peak and short-haul patronage; progressive companies are groping for rate revisions that will stimulate the use of cars between rush hours for short distances. Is a ride for 2 cents the answer? Here is an account of the experience of one large traction company.

By JOSEPH H. ALEXANDER
PRESIDENT, THE CLEVELAND RAILWAY COMPANY

IF one criticism more than another is applicable to us executives in the street railway industry, it is that we have too long regarded our problem as a purely operating one.

Since the war the street railway industry has become increasingly a merchandising problem, and, in my personal opinion, the future operating development of the industry should have as its main objective the selling of rides and the creating of new customers.

In its early days the street railway industry had virtually a monopoly of urban transportation. The people, for the most part, had to ride our cars or walk. There was no need of adjusting fares to attract riders, and so flat rates prevailed. (These flat rates, incidentally, had much to do with building up suburban territories and increasing long haul riding as compared with the short hauls.) Under these conditions it was natural that the street railway man centered his attention exclusively on maintenance and operation.

The advent of the automobile as a tremendous economic factor completely revolutionized this state of affairs.

Instead of remaining a virtual monopoly, the street railway industry became one of the most competitive in the world. Nevertheless, the old merchandising methods, or lack of methods, continued to prevail while our former patrons steadily deserted us for the automobile.

It was in an effort to develop methods to combat this state of affairs that the Cleveland Railway Company inaugurated its 2-cent fare zone in a restricted downtown district. It appeared to us that at the start we could compete with private transportation

most successfully on short hauls rather than long hauls, and in the district in which both traffic congestion and frequency of street car service were greatest.

A STREET car ride for the price of a postage stamp was, of course, a unique thing, in this country at least. It was our conviction that to attract short riders the rate of fare would have to be based on the actual cost of the short ride and not on the average cost of a ride all over the system. This will not seem a very radical conviction unless viewed in the light of the fact that the prevailing sentiment throughout the industry was that the public did not give a tinker's dam what the fare was—whether 5, or 8, or 10 cents—so long as it got speed, comfort, and convenience.

The 2-cent rate was frankly an experiment. We were perfectly willing to admit we were mistaken if the results proved us so. Under the service-at-cost plan set up by the Tayler Grant in Cleveland, the zone service had to be self-sustaining to be permitted to continue. Up to the present time the best indication of its measure of success is that after more than two months' trial, the low fare zone is being continued indefinitely, although city council has increased the rate from 2 to 3 cents, at the same time increasing the length of the zone from approximately three-quarters of a mile to approximately one mile. The plan under the 2-cent rate has not quite paid its way, and council is rightly unwilling that its continuance should exact a penalty from riders in other areas.

JUST as the results of an experiment in a physical or chemical laboratory are meaningless unless every conditioning circumstance is taken into account, so the results of the 2-cent fare experiment must be considered against the nature of the locale in which the experiment is being carried on.

The 2-cent fare has been effective on Euclid avenue between Public Square and East 18th street. This includes the most important business, shopping, and theatrical district of Cleveland — Public Square, at the western terminus of the low fare zone, is the location of the Van Sweringens' vast Union Terminal development. It is the common focus of urban, interurban, and national transportation. All the surface lines in the system loop at Public Square; the Shaker Heights rapid transit line terminates there, and most of the steam roads use the passenger facilities of the Union Terminal.

At the eastern extremity of the 2-cent zone is the city's main theatrical district. Along the avenue, between the termini of the zone, are the city's most important department stores, banks, office buildings, and one of the leading hotels. Thousands of pedestrians daily throng this section of the avenue—women comparing prices in the various stores, business men transacting affairs in office buildings, theater goers, and others.

One very important factor affecting the experiment in the 2-cent fare rate is the unusual frequency of service on downtown Euclid avenue. During the rush hour, for illustration, the headway between East 14th street and the Square is less than a minute

and on the base schedule it is less than two minutes.

FARE collection at first was pay-enter inbound (toward the Square). We found that this slowed up the cars, so it recently has been changed to pay-leave, the passenger obtaining a zone fare slip from the motorman or conductor when boarding the car and dropping the slip with the two cents in the fare box when leaving. Outbound all fares are pay-leave; the passenger merely deposits 2 cents when alighting. This zone fare includes no transfer privileges.

Prior to the establishment of the 2-cent rate, 3,000 passengers, exclusive of those riding on transfers, were carried daily within this zone at the regular 8-cent fare. In order to break even on revenue it would be necessary to carry 12,000 2-cent passengers within the zone without increasing the cost of service. We believe that even if the revenue from the low fare zone no more than balanced the cost, the experiment would be a success, because the usefulness of the company to the community grows with the increase in the number of people it serves.

THE experiment began in the middle of July, when many people were on vacation and business was in a seasonal depression. Nevertheless in the first week, the week-day average of 2-cent riders exceeded 8,000. In the second week the week-day average increased to nearly 10,500 and hit its peak the third week with an average of 11,360 riders. Since then the figure has varied between 10,000 and 11,000 2-cent riders daily.

The approximate $30 average daily deficit could be considered an excellent investment in public education and good will. In this connection, I might report that the local newspapers gave us many columns of favorable publicity on the plan. Two of the largest Euclid avenue department stores cooperated with the publicity by using reprints of the company's newspaper advertisements as package inserts. If the experiment had served no other purpose, it would have been worthwhile for its effect on public sentiment.

The very fact that the experiment is to be continued with a 1-cent increase in fare and an extension of the zone to East 22nd street is in itself an indication that we do not think we have as yet sufficient data from the experiment to draw any very sweeping and dogmatic conclusions. However, several broad general conclusions may even now justifiably be drawn.

THE chief conclusion drawn from this experiment is that rate of fare is a highly important factor, perhaps the most important, in attracting people to the street cars.

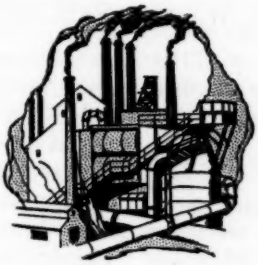
Riders can be induced to ride the street cars for extremely short hauls if the rate of fare is reduced correspondingly. It may be that the past procedure of the industry in arbitrarily raising fares when traffic falls off should be modified.

It is a question whether this industry's methods of regulating rates of fare may not run counter to the normal law of supply and demand. Moreover, in most industries, the old order, in which cost determined price, is being reversed and costs are

changed to conform with price. This is simply one of the questions suggested by the results of our experiment so far. We believe we have as yet insufficient data on which to draw conclusions, but submit the question as a fruitful line of inquiry for every brain in the industry.

ONE vital factor, besides fare, in the building up of short haul business is frequency of service. Our inspectors noted that, despite the extremely low headway in the low fare zone, people intending to ride would walk should the next car have been held up a minute or so by a traffic light or some other obstruction.

One point I wish to emphasize; our low fare zone system is not generally applicable in an unmodified form. However, the results do seem to point to some system which will more nearly apportion the rate of fare to the unit cost of a ride than is now the practice, as a solution to the fare problem. And a scientific solution to the fare problem must be found and applied before we can go very far in merchandising street railway transportation against the competition of private transportation.

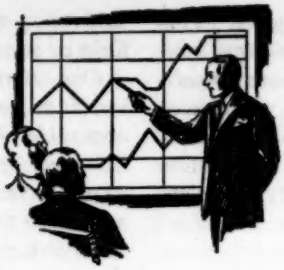


"Utility" Profit

MODERN public service commissions aim to secure public utility service for customers of utility companies at cost. The companies are allowed to charge enough to cover their operating expenses, and to provide for depreciation and taxes, and also for a reasonable return on the property used and useful in the service. The return covers the cost of the capital and management.

THIS return is often referred to as "utility profit," but it is not profit as that term is understood in private business. Under strict regulation what the company gets is the reasonable cost of the service.

IN some cases what are called "service at cost" contracts are entered into between local authorities and the utility companies. The purpose of such a contract is to provide an automatic way of increasing and decreasing rates to correspond with varying costs without the necessity of frequent applications to a commission, and the necessity of extensive revaluation of the property.



When Should a Utility's "Capital" Become "Surplus"?

A plea for the elimination of the traditional legal restriction on the treatment of "capital" and "surplus" of utility corporations.

By W. M. McFARLAND

In the preface to Bill Nye's "History of the United States," there appears an odd passage:

> "We, each of us, the artist and the author, respect facts. . . . But we believe that they should not be placed before the public exactly as they were born. We want to see them embellished and beautified. That is why this history is written.

To aid in unshackling certain facts, terms, and phrases from the embellishment and beautification of conflicting definition, and consequent strained application, should be one of the foremost desires of everyone connected with the utility industry.

The day is long past when any utility company or system need have much worry about the size of its valuation to support its present rate schedule. This is true because of the almost universal recognition of the doctrine that "the lowest possible rate is the best revenue producer in the long run."

However, as the years go by, this sound economical principle will more and more result in increased earnings, so that it will always be necessary for a utility to demonstrate clearly and definitely its true financial position. It is, therefore, of importance to all, and the sincere wish of the industry, to be able to state its position clearly and accurately in words, phrases, and figures that will tell the same story to every reader whether he be an accountant, an engineer, a lawyer, a financier, a commissioner, an investor, or a stockholder.

A recently published address entitled "Brothers Under the Skin," by Henry M. Brundage, vice president of the Consolidated Gas Company, which emphasizes the desirability of keeping engineers and accountants in harmony in their lines of thought and

thereby avoid confusion in records of operations and additions to, and retirements from, fixed capital accounts, is a noteworthy contribution to business literature. The designation and safeguarding of original entries and the avoidance of nondescript, faulty, and confusing plant records, which cause so much unfortunate confusion both to the tribunal and to the contesting parties in rate proceedings, is certainly of great value not only to the engineers and accountants themselves, but to the utility industry as a whole.

We can only regret the lapse of time necessary for a man of letters, an artist, or a historical figure to become appreciated for his true worth. However, a workman usually, if he puts forth time and effort, can improve the utility of his tools. We who are engaged in the utility industry and its financial affairs, should do more than sit quietly by and await the establishment of the best opinion in regard to the meaning of terms which we are constantly using.

WHILE we probably are as yet not in such a deplorable condition of confusion about the meaning of such terms as depreciation or amortization, yet the words "capital" and "surplus" offer problems. In spite of the fact that only certain restricted features and tendencies in regard to capital and surplus are to be here considered, it will be of service first to establish the fundamental conception of these terms.

When the corporate entity developed to the place where the original funding of the common project was usually done by the disposal of its stock, we began to call these representations of ownership in the project, capital stock, and the fund of the entity became known as the capital of the corporation. It is, therefore, apparent that the fundamental conception of what was the capital of the corporation was the amount received by the corporation in exchange for its shares of stock. As soon as the corporate project gets under way, this capital fund, of course, goes to work and, in most cases, goes to property, contracts, and any other place which will develop the corporate project. These expenditures from the capital are, of course, made for items which, while they reduce the amount of cash in the capital fund, add what the corporate officials believe to be of equal value in some other kind of asset. These assets are expected to bring a profit to the corporation and, therefore, not to result in a reduction of capital. The capital account is soon made up of many items of different kinds of property, some of which will even be intangibles, such as attorneys' fees and advertising for example.

ASSUMING that originally $50,000 of capital stock was sold, there would be that amount of capital assets represented by the cash, or the things into which certain portions or all of the cash have been invested. There would naturally be also $50,000 of liabilities represented by the stock in the hands of those who supplied the capital assets.

After the corporation begins to prosper, we may find that in a short while the corporation will have assets in excess of $50,000. The amount of

this excess is naturally surplus, and as on a balance sheet the assets would now be, say, $55,000, there would then be inserted on the liability side an item of surplus in the amount of $5,000.

This illustrates our original basic conception of what the terms "capital" and "surplus" meant in common usage. Now what is the effect upon this basic conception of such terms which have been brought about by "no-par value stock?"

Is it not possible that capital is beginning to be that amount of the corporate assets which those who manage the corporation consider as being necessary to keep tagged and restricted in the hands of the corporation for the protection of the stockholders' equity upon liquidation?

The old but still prevailing rule that dividends cannot be declared out of capital is such a restriction and was established for the protection of the stockholders. The change in our concept as to capital, if any, would seem to be only in giving a certain flexibility to capital and a placing of the power to shift the same in the corporation's governing body, the board of directors. This might not at first seem to be a radical change, but an examination of the statutes and the corporate action taken in regard to it will demonstrate otherwise.

Section 14 of the Delaware General Corporation Law, as amended, effective March 22, 1929, provides:

> " . . . Any corporation may by resolution of its board of directors determine that only a part of the consideration which shall be received by the corporation for any of the shares of its capital which it shall issue from time to time shall be capital; . . ."
>
> (This applies only to No Par Value Stock and the statute contains further restrictions in case of Par Value shares.)

The statute then goes on and provides:

> " . . . The capital of the corporation may be increased from time to time by resolution of the board of directors directing that a portion of the net assets of the corporation in excess of the amount so determined to be capital, be transferred to capital account. The board of directors may direct that the portion of the excess net profits so transferred shall be treated as capital in respect of any shares of the corporation, of any designated class or classes. The excess, if any, at any given time, of the total net assets of the corporation over the amount so determined to be capital, shall be surplus."

Briefly, this provision could be summarized as placing in the board of directors the right to divert such portion of the sale price of stock away from capital and into surplus, as it thinks necessary for the protection of stockholders and the interests of the corporation. The amount thus available for expenditures would, but for such action, have been construed as reduction of capital. Likewise, when the directors feel that any particular class of stock should have more assets behind it, they may accomplish this purpose by transferring a portion of net assets to capital.

This would seem to give a great deal of support to the previously stated theory of what is now really meant by capital, at least so far as the state of Delaware is concerned. Naturally, if such a definition is to be

A Needed Reform in Security Issue Accountancy:

UNDER the old concept "capital" is regarded as an amount represented and limited by capital stock; "surplus"—as the excess of asset values.

Under the new theory, permitted in Delaware, and to some extent in Maryland, corporate directors are given the discretion to divert funds realized from the sale of stock away from capital and into surplus or VICE VERSA.

Traditional limitations upon the use of capital funds are unnecessary for the protection of stockholders in view of the prevailing personal honesty of corporate directors. Such restrictions hinder the normal growth of corporate enterprise by depriving directors of a flexible means for coping with fluctuating business conditions.

applied to capital, surplus no longer is quite the same as before. If the board diverts a portion of the proceeds of sale of stock from capital, it would seem that the necessary beneficiary of this diversion must be surplus.

IN "Capital Stock Without Par Value," by John R. Wildman and Weldon Powell,[1] surplus is defined as follows:

> "Surplus, from the point of view of corporation accounting, is the excess of asset values over liabilities and capital; the latter as represented by capital stock."

Most any accountant, if he still attempts to use our old conception of capital and surplus, is going to have some decided views on the effect of any such action by a board of directors.

For example, he might say, "Sometime ago we recognized a *quasi*-surplus and styled it capital surplus. We restricted this, however, to all the limitations of capital so far as its usage was concerned, and we believe this diversion from capital by such an action should, if allowed at all, go into capital surplus and be so restricted."

Now it is evident that this is not the intention of the act, since it would thereby be made devoid of any real effect or meaning. Furthermore, the act has now been in effect for a period sufficiently long for the corporations to begin to make use of its prerogatives.

WITHIN the past few months the newspapers have carried a story of a company which marketed to the public about $25,000,000 worth of securities and allocated approximately $6,000,000 to capital and the remainder to surplus. Presumably this surplus is available for use in payment of dividends, interest, and losses, which would not be true as to capital

[1] Published in 1928, at page 98, in Chapter VIII.

or as to capital surplus. Many other companies are following what appears to be a sound policy of allocating to capital an amount equal to the fixed liquidation value of the securities (where the company has a class of stock with a fixed liquidation value) and allowing the balance to go into surplus with no restrictions as to its usage in furthering the affairs of the corporation.

This seems to be the view of Messrs. Wildman and Powell as expressed in "Capital Stock Without Par Value." At page 109 appears the following statement:

> "The economics of enterprise recognize a fundamental distinction between capital invested as a fund with a view to producing profits and the profits produced. . . . Soundly drawn statutes recognize the distinction and require that it shall be respected. An individual with a share interest in a sum combining capital and profits is entitled to knowledge of the respective amounts involved. Plain business morality requires of those who administer business enterprises for the benefit of shareholders that the latter shall be informed of these facts. . . . A corporate balance sheet which ignores the differentiation between capital and profits fails to conform to a principle which is intended to serve the interests of all the parties concerned. . . ."

It should be noted, however, that these statements are in the chapter entitled "Relation of No Par Value Stock to Surplus," and that in a previous chapter, in discussing "Abolishing Capital and Surplus," under the chapter heading of "Consideration of Original Issue," it is said:

> "To credit all of the consideration (received from sale of original issue of stock of corporation then existing and having a surplus) to capital would convey to the holders of such shares a right to participate in surplus accumulated prior to the time they became stockholders and such position would seem to be inequitable. It would seem to be fairer to divide the amount of consideration between capital and surplus in the same ratios as the capital and surplus have to the total of capital and surplus prior to the issuance of the new shares."

JUDGING alone from these statements, it would seem that we are advised to abide by our old concept for the original establishment of the capital fund, but to agree somewhat with the new definition as to proceeds from the subsequent sale of stock.

Of course, the natural result of such an attitude would be a complete adoption of the new theory, as the original sale of stock might then be limited to the minimum required by statute to be paid up upon beginning business, and the remainder of the stock then be sold with all the rights of allocation already pointed out. The one exception, of course, would be if we adopted the limitation of the authors of "Capital Stock Without Par Value," so far as concerns the ratio of allocation based upon the ratio of capital and surplus as it existed prior to the sale of this stock.

This would seem to be an arbitrary limitation not called for by any interpretation of the statutes which allow an allocation of the sale price. It is the very fact that situations arise where the surplus of past years is not sufficient to meet the proper and immediate requirements of the corporation, that creates the desire for an allocation, and it is not what has hap-

pened in the past, or what may be needed in future years. The need, many times, for allocation grows out of some such situation as a corporation which has been operating without a sizable profit for a period of time, but which has been carefully laying its foundation and building up its business which is going to be profitable. The ground work is done, and the company is ready to take over some project. It issues securities and decides to make the most of present opportunity and not have these funds tied with the restrictions of capital. This causes it to allocate the proceeds realized from the securities between capital and surplus. If it has not had much profit in the past, its surplus would be negligible and an allocation impossible under limitations proposed by "Capital Stock Without Par Value" as already quoted. It would seem much better to adopt the new concept as to capital and the conservative position of restricting the allocation so as to keep in capital an amount equal to the liquidation value of the security. This would give the most security possible and still allow the corporation to benefit by taking such action.

THE objections to a change in our attitude towards capital are not so sound as their bare statement might indicate. It is true that a balance sheet should reflect a true condition of the corporation's affairs. Yet, what percentage of security holders today can obtain such accurate information from a reading of a balance sheet? Is it not a fact that one must be an expert in order to obtain such facts?

The objection of placing so much authority in the hands of the board of directors meets with an attempted solution in the Maryland Statute similar otherwise to that quoted in Delaware. Subdivision (3) of Chapter 581, of Maryland Acts of 1927, which is Chapter 226 of the Acts of 1929, provides:

> "Whenever such stock shall have been issued for a consideration of which, or of the value of which, a part only *shall be contributed* as capital, the amount of such stock issued shall include only that part of the amount or value of such consideration *so contributed* as capital."
>
> (The statute also then, as in Delaware, authorizes a stepping up of capital by capitalizing surplus or net profits.)

The point of interest in this statute is that it puts the burden on the purchaser of the stock to determine whether all of his money paid for the stock shall go into capital. If he desires it to be allocated, a part to capital and a part to surplus, he must fix the allocation. Whether such a provision will be of any effect depends entirely upon the whim of the issuing corporation. If it really desires a

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¶ "IT IS . . . *the sincere wish of the industry to be able to state its position clearly and accurately in words, phrases, and figures that will tell the same story to every reader whether he be an accountant, an engineer, a lawyer, a financier, a commissioner, an investor or a stockholder.*"

certain fixed allocation it may first sell its stock to an affiliated company, or to any individual, with the arrangement that such company or individual will demand such allocation, and then dispose of the stock to its originally intended market.

CERTAINLY the half-way measure of allowing a capital surplus to be created by such an allocation, by placing upon it the same restrictions as upon capital, does not have much effect or give much protection.

Suppose the corporation had an amount of unamortized bond discount on its books, and wanted to have it eliminated. The allocation upon the sale of the original issue stock could be between capital and capital surplus, and there would not then be any valid accounting reason for refusing to allow the unamortized bond discount to be written off against this capital surplus and the desired result obtained. Therefore, the clinging to an old concept would have no practical effect in such an instance save to satisfy prejudice against change.

A refusal to admit that it is economically sound to allow any allocation is almost tantamount to taking the stand that we will attempt to refuse to lend to the growth of business and enterprise the assistance of changing our rules and concepts as to terms, even though business has outgrown them. If it is sound to allow it at all, we must do so in such a way as to allow a benefit to be realized. If this reasoning is correct, it would seem that we could whole-heartedly adopt the Delaware statute as stating a correct principle, assuming that we could also admit the propriety of leaving such action to the discretion of the board of directors. A powerful argument lies in the well-known fact, (which is so often overlooked), that the only difference between capital and surplus of a going concern is the restriction which custom and statute have placed on the use of capital funds.

HERE are two more reasons for allowing such discretion to be placed in the hands of the board of directors:

1. A stockholder who purchases stock in a corporation, does so to a great extent because he relies upon the honesty and upon the good business judgment of those who are conducting the company's affairs.

2. Under present-day conditions, no business of any size can be profitably operated except upon a strictly honest basis.

With these considerations in mind, it would appear that the modified definition of capital and of surplus is well worth encouragement and adoption if universally understood and applied.

Dr. Julius Klein, Assistant Secretary of Commerce, in a recent article in the *American Magazine*, said:

> "Our eagerness to be rid of antiquated methods and equipment is one of the chief reasons for the success of American trade expansion throughout the world."

The answer of the utility industry to such a challenge is no better rendered than by the placard which hangs in a certain dynamo room in this country. It reads:

"Tradition is the enemy of progress."

As Seen from the Side-lines

WHEN a thoughtful man thinks of political, social and governmental experiments he naturally turns to New England.

* *

IT was so in the day of independence, for there the spark of liberty was kept afire. There the anti-slavery campaign was initiated.

* *

THERE the first substantial adventure of self-government was attempted. Bryce, you may recall, found the New England system of town government, the purest form of democracy in the world, and after one hundred years of trial he saw it undiluted upon his visit and study of it.

* *

THE late Senator La Follette once confided in me his opinion that the labor laws of Massachusetts, as an illustration, were the most advanced in the United States, not excepting his own Wisconsin, of which he had been governor.

* *

MASSACHUSETTS adopted and it maintained the forty-eight hour week for women in industrial establishments, even at the expense of the countervailing competition of the long-houred south. Governor Smith's boasted factory code in New York was young when the Bay State system had become gray around the temples. Its minimum-wage law and its anti-involuntary system of arbitration of disputes in the struggles between capital and labor hold forth the light to those who believe that the pathway of so-called "progressiveism" is the best, if the most difficult of attainment.

* *

ITS election laws will be copied by the national Congress—that is if the national legislators ever get beyond the state of crude politicians and into the realm of statesmen and are willing to act rather than merely talk of the purification of election contests.

* *

A PECULIARLY independent section of the country is New England. The unknowing regard it and describe it as "conservative." They know not whereof they speak, or, knowing it, deceive themselves and the public as a whole. Not much conservatism in those old Yankee skippers who built their own ships and carried American goods in American bottoms into every port in the world, even in defiance of the black flag of piracy which had the rest of the world always shaking in its boots.

* *

ON the above predicate, intelligent men interested in the subject of public utilities and the regulation of them are the foremost to inquire, "What was the what and the why and the wherefore of this recent referendum on public ownership of the Boston Elevated?"

* *

FOR the benefit of the uninitiated let us observe briefly that the Boston Elevated is one of the most important metropolitan transportation systems in the country; it is the life blood of Boston's transportation, bringing in excess of 1,500,000 persons to and from the city daily. It collapsed about thirteen years ago. It was on the verge of bankruptcy and a good, old-fashioned northeaster from the Atlantic would have blown it over the brink.

* *

THE handicaps, inconveniences, and downright iniquities of its service jeopardized the metropolitan area. Its management was as unpopular as a bandit at a gasoline station at midnight. The people saw that the service must be reëstablished. They perceived that they would have to pay for its rehabilitation, out of their carfares. So, they decided, through their legislature, that

in return for their expenditures, they must have the management of the road in their own hands. The legislation subsequently enacted provided that the private owners of the road would be compensated to the extent of 6 per cent on their investment and that in return the private owners would give over their road for operation by a board of public managers to be appointed by the government.

* *

THIS was called the Public Control Act.

* *

AT its inception, this act created a howl among many critics. "Why pay the robbers 6 per cent?" was one of the familiar castigations. The stock quotation ascended from thirty to seventy-five dollars a share. Fares went up, from five to six, to eight, and then to ten cents. And, of course, those increases robbed some of the car-riders of their self-complacence and their good humor.

* *

THIS system has been in effect some thirteen years. It has had its continuous and its new-born critics. Governors have discussed it and legislators have wrangled over it. On the one hand there has been somewhat of an insistent campaign for return of the road to its old private owners. "Public control was only a war measure, and this property should be returned to the stockholders and public operation abrogated as has been done in the case of the railroads," these advocates have argued.

* *

ON the other hand, there has been what seemed to be an increasing demand for complete public ownership. "You have dumped $40,000,000 of your money, through carfares, into this road for its rehabilitation," have said these advocates. "You can never obtain the fullest advantage of your expenditure, nor can the new rapid transit lines needed for the present and the future be inaugurated either under public control or private ownership. Take over the road in its entirety. You can buy it for $110,000,000, a very fair price, and you can save $1,750,000 a year in financing expenses alone (the difference between government bonds and the 6 per cent guarantee to the shareholders) and this sum can be used to reduce fares or improve the service, or both."

* *

ARGUING for return to private ownership you had such a distinguished person as Mr. Eliot Wadsworth, a former assistant secretary of the treasury recently recalled into national service by President Hoover. And insisting for public ownership you had an interesting combination of Yankee Republican legislators and young men of Irish derivation in the public life who are exceedingly popular and trusted in their large and far-flung legislative districts.

* *

PUBLIC control had as its only articulate proponents the street railway employees. They said they did not differ with the principle of public ownership but under public control as it existed they were receiving a square deal and were loathe to make any change from it whatsoever.

* *

BUT when the question was finally submitted to the people of Boston and the other thirteen populous cities and towns, they voted 110,106 for public control, 93,831 for public ownership, 60,897 for return to private ownership.

* *

IT seems to me that everybody can get consolation out of these figures. You can take them according to your own liking and predilections and make something worth while out of them.

* *

MY own judgment is this: The results show that the public do not want the road restored to private ownership. The purchase price of $110,000,000 for public ownership stuck up like a sore thumb. Public operation has made the best of a job that the public estimated was difficult to adjust from a bad start.

John T. Lambert

What Others Think

The Threat of Political Interference With the Work of the State Commissions

In the early days of commission regulation when the commissions were able to reduce rates, there was very little political agitation against them. They were not altogether without criticism because they were not always able to grant what the ratepayers demanded. When the World War came on, however, and there was a great uprise of prices of all kinds of things, the commissions found it necessary to increase utility rates. To do that in the face of strong public pressure against it required courage.

No better example of the wisdom of regulation through state commissions rather than by direct action of the legislatures, or by franchise contracts could be given than what happened in commission regulation during this abnormal period. The commissions did not hesitate to raise rates wherever they deemed it necessary, and thus the public was saved from the ill consequences of a policy of static rates which would have forced a large number of the public utilities into bankruptcy.

This policy, however, made the commissions, for the time being, unpopular, and here and there political leaders have arisen who have demanded the abolition of the state commissions. This has happened in Oregon, and William C. McCulloch, in discussing it, points to certain considerations about public utility regulation which are not well understood by the public. What, for example, would be substituted for regulation?

Shall we again make commission regulation the football of politics which it was before the era of state regulation? Mr. McCulloch says:

"No small part of the work of the public service commission of Oregon has to do with matters of purely local concern and of no state-wide interest, such as a complaint of one shipper against a railroad about a single rate, or of a customer of some utility with respect to his rate or his service. The commission handles and adjusts hundreds of such matters that are of little or no interest to anybody except the parties immediately concerned. The commission, of course, is not a court and a substantial part of its work is handled by informal proceedings. Many minor and purely local matters of this kind undoubtedly would go unremedied if the commission were abolished for the time and expense and trouble of getting a bill through the legislature and signed by the governor in such a case would deter the most optimistic. At the present time no shipper, consumer, railroad, or utility that has a grievance relating to rates or service need pay any filing fee or trial fee or costs or disbursements to have it heard and determined. The commission is a tribunal from which speedy, impartial, and complete justice may be obtained by any interested party at little or no expense. The legislature of the state meeting once in two years for a 40-day session would be a poor substitute for it.

"The commission, however, functions all the time without interruption. And this is of importance to shippers, consumers, carriers, and utilities alike. The commission has power to make emergency rates. It also has the salutary power to suspend, pending a hearing, proposed increased rates. If the commission were abolished, those two powers could not be exercised at all unless the legislature happened to be in session no matter how great the emergency or the necessity for action might be.

"From the standpoint of numbers, of experience and of expert knowledge of the matters with which regulation of common carriers and of public utilities must deal, there can be no doubt but that the members of the commission are much more qualified to act advisedly and intelligently than the members of the legislature. The commission has three members. The legislature has ninety members, thirty in the senate and sixty in the house. It is obvious

that regulation by the legislature would be a slow, uncertain, and ponderous process at best.

"WITH the regulation of common carriers and public utilities in the legislature, how could such regulation escape becoming a political football? The public service commission of Oregon makes its decisions and determinations on the merits of the questions involved in the light of the evidence introduced by the interested parties and according to the preponderance of such evidence. But with such regulation in the legislature the particular relief sought, a reduced rate or an adequate service for example, would be the subject matter of a bill. Its passage would depend on the number of favorable votes that could be gotten for it. Wholesale vote trading would be inevitable. The personal influence and popularity of the sponsor of such a bill likely would count far more in obtaining its passage than the merits of the particular proposition. Rate regulation in Oregon would be on a pretty low plane if it depended chiefly on political pull and influence. Strong, well populated, and influential counties in the state could and would expect to fare better at the hands of the legislature in such matters than the thinly populated counties. This subject of politics in rate making might be pursued almost indefinitely, but enough has been said to point out some of its evils at least.

"Regulation of common carriers and of public utilities by such tribunals as the public service commission of Oregon is not an untried experiment in Oregon or elsewhere in the United States. The Federal Government by creating the Interstate Commerce Commission in 1887 set an example that has been followed by the legislatures of the various states without a single exception so far as the writer's knowledge goes. To recount the work and accomplishments of the present commission for the twenty-three years of its existence would be a long and interesting story in which the people of this state would be justified in taking pride. It is conceivable how an advocate of the abolition of the public service commission might so act either from ignorance or malice. The voters of this state may be trusted to express their views of men and measures at the polls without malice. In this writer's opinion, they will hardly express a view in favor of the abolition of the public service commission of Oregon if they are acquainted with the facts and if they know some of the consequences that would result."

IF one analyzes the complaints against commission regulation, he will find that they all simmer down to a difference of opinion as to the reasonableness of rates. Most of this is again due to a difference of opinion as to whether the return of utility companies should be based on prudent investment or the present value of the property.

As a matter of fact, only a small part of the regulatory matters which are constantly handled by the state commissions and which obtain no publicity have to do with rates. Thousands of complaints which are very vital matters to the complainants are adjusted through the offices of the commission without delay or expense. All of the commissions are overworked, a fact which in itself is some evidence of the need of regulation. The matters which are now handled by our state commissions could not be handled as well either by the legislature or by the local authorities. State regulation of public utilities while by no means perfect has made a tremendous contribution to our industrial progress through proper control over the development of the utility business. To abolish commission regulation would be to return to the old evils which led to the insistent demand for state regulation through commission.

IS THE ABOLITION OF THE PUBLIC SERVICE COMMISSION OF OREGON NECESSARY OR DESIRABLE? By William C. McCulloch. *Oregon Law Review.* June 1930. Page 437.

The Interest of the Politicians in Domestic Rates—Representing 20 Per Cent of the Total

CRITICISM of state regulation of utilities is based on the theory that the utility companies are charging excessive rates and that the commissions, for one reason or another, are unable to prevent it. So far as the political leaders have interested themselves in the subject, they have directed their at-

tention to domestic rates. These have been practically the sole object of attack. Floyd L. Carlisle, chairman of the board of directors of the Niagara-Hudson Power Corporation, in an address before the Bond Club of Philadelphia, alluding to this subject said:

"Public interest in rates and disputes concerning them are almost entirely related to the household use of electricity and gas. Of the total amount of electricity generated and sold by the companies, not to exceed 10 per cent is sold to the householders and perhaps another 10 per cent to small users. The balance, or 80 per cent varying with the nature of the manufacturing on the lines of the utilities is sold for industrial uses. The price at which this 80 per cent of the energy is sold is limited absolutely to a figure no higher than the cost of generating electricity by the industrial plant itself. This industrial business is subject to the hazard of the success of the particular manufacturing plant using it and the ability of the manufacturer to prosper and continue in his line of business. It is also subject to constantly changing new processes in industry which have often discarded electrical processes for others. The managers and operators of public utility corporations necessarily devote the greater part of their time to selling electricity and gas for industrial purposes. Wherever the industrial load exists, household rates are invariably less than those in companies not possessing such industrial uses. Cheaper prices to both classes of users are possible by their combination because they largely use the same generating and distributing sources and their separation would result in higher rates both to the householder and the manufacturer.

"In the last twenty years there has been, except for certain periods during the war, a constantly descending schedule of rates and a corresponding increasing consumption of electricity. Due to this fact, there has been almost a complete absence of rate complaints or rate cases arising from the consumers themselves. The enormous improvement and the reliable character of the service at prices negligible in the family budget has caused no economic pressure from the consumer."

Not long ago the Wisconsin commission stated that there is no widespread discontent over utility rates; that in almost every instance the discontent was limited to a small circle of agitation. But complaints that rates are excessive are always popular. This is not limited to utility rates.

Absence of complaint does not prove conclusively that utility rates are not too high, nor does the general charge that they are excessive, prove that they are.

—D. L.

What the Recent Elections Mean to the Public Utilities

Now that the smoke of political battle engendered by the November elections is clearing, both the friends and enemies of the public utilities are making surveys of the results and coming, as usual, to conflicting conclusions. It cannot be denied that candidates who are critical of public utility regulation have been more fortunate in attaining office than those who have more or less frankly advocated government ownership; to what extent the success at the polls of this latter group may be credited to any conscious desire of the voters to express their opinions on this political and economic controversy is a matter of conjecture; certainly in many if not most cases the wet-and-dry issue, the economic depression, with its attendant unemployment, the tariff, and local factors entered predominantly into the campaigns.

"A forced importance is being given both in press and magazine to the implications of the results as they effect what is coming to be called the utilities issue," observes *The Argonaut*, of San Francisco. It continues:

"Candid appraisal of the national situation compels the statement that as far as 1930 goes, regulation of public utilities, in the sense of water power and allied concerns, has not yet become a major matter. In an election which was not conclusive of anything, even of public sentiment on the Eighteenth Amendment, wherein a strong trend was shown, or the tariff,

which seems to have been unpopular; or on ways and means to combat unemployment, because the electorate merely expressed its disapproval of a famine in pay checks, rather than endorsed a sound method of bringing them back, it seems undue strain to find a really mounting public conviction on the utilities question.

"It entered into the campaign in only four spots, in New York with the Democratic Roosevelt, in Pennsylvania with the Lord-knows-what-he-is Pinchot, in Oregon with department store Meier, in Tennessee with an obscure person named Lovette hurdled into congress over the Hoover-devoted head of Congressman Reece.

"But to say that Governor Roosevelt was elected because he wants New York to own and sell its own water power is nadirly inadequate. To say that Pinchot was elected on that issue is even less correct because he was elected in spite of his utilities view as indeed he seems to have been elected in spite of everything else except the existence of an inert mass of Republican votes with the consistency of granite and equal imperviousness. Nor was Meier's success in Oregon due to that plank. We are thus left to contemplate the loss of the excellent Carroll B. Reece who made the mistake of doing as he was told by the President and then found that the hazardous experiment of gaining a benediction by letter, the only one Mr. Hoover wrote during the campaign for anybody, was not powerful to make the hard headed mountain Tennesseans vote other than as they wanted to vote.

"This is not to say that the question of the control of natural resources and the utilization of the power they beget is not to be ultimately an issue. It cannot well escape if the arteries and the vocal chords of Uncle George Norris of Nebraska continue to display their accustomed health and vigor.

"Utilities still represent an abstraction politically to the average voter. His vocabulary just now is limited to wet and dry, to tariff and to unemployment. He is quite likely not to seek to enlarge his voting lexicon during the coming two years."

To what extent these newly-elected and reëlected holders of public office will choose to accept their success at the polls as an expression of the desire of the people to assail the utilities, remains to be seen. Unless the more pressing political and economic issues are disposed of, however—and there would seem to be but a slight likelihood that the wet-and-dry controversy and the unemployment situation will be adjusted with any degree of speed—"the utilities," *The Argonaut* concludes, "may take a quiet seat on this side and rest there undisturbed unless they commit some egregious folly."

—D. L.

THE UTILITIES ISSUE. *The Argonaut*, San Francisco, Calif. November 15, 1930.

What We May Learn About the Regulation of Motor Transportation from the British

JUST because our British cousins do not have a dual system of sovereign government such as our own, with its constant Federal *v.* State complications, is no indication that their regulatory problems are not pretty much the same as our own, at least in the matter of motor transportation regulation.

For five years our Congress has grappeled with the idea of Federal regulation for interstate busses, yet the current session of Congress finds the Parker-Couzens bill still locked in the legislative jam on Capitol hill. The British, confronted with a like problem in bus regulation, approached a solution by creating, in 1928, the Royal Commission on Transport whose job it was to make a thorough study of: (1) operating traffic conditions; (2) licensing and the coördination of motor transit service; (3) general coördination of all transportation facilities.

This commission report was enlightening. If it were not headed by a British title, one would almost suspect that the study had been made here in one or some of our own states. The introduction observes:

"The existing system of licensing, based upon acts passed at a time when the internal combustion engine was unknown, is from almost every point of view totally unsuited to present-day requirements. It not only entails great inconvenience upon

both licensing authorities and operators, but, in not a few instances, imposes a heavy and unnecessary burden upon highway authorities, who, *per se*, have no voice in licensing matters. In addition to this, the unnecessary multiplication of competing vehicles adds largely to congestion and is a fruitful source of danger to the public.

"We recognize that any new system of licensing which may be devised will almost certainly be liable to criticism and objection, but under the scheme propounded, which we have endeavored to keep free from all unnecessary complications, we believe it will be possible to regulate the licensing of public service vehicles with the maximum of advantage to the traveling public, and to those who provide service by road, while, at the same time, it will leave to local authorities such a measure of control as is necessary to protect their interests."

MR. Ivan Bowen of Minneapolis, Minnesota, tells us of this report and what the British did about it in *Bus Transportation* (November, 1930). He describes in some detail the proposed law which accompanied the commission's report and which subsequently became enacted.

One notable feature of the British act, according to Mr. Bowen, is that it distinguishes between urban and interurban busses; the former are called "stage carriages" while the latter are called "express carriages." A third group, "contract carriages," are chartered vehicles such as the taxicab and are exempt from regulation.

Great Britain had a question of divided authority almost as serious and probably more complicated than our State *v.* Federal situation. It appears that numerous subordinates licensing authorities existed—over 1,333, and this led to confusion.

The commission decided on the following regulatory plan: The British Isle was divided into eleven "traffic areas"; Scotland into two. In each area a single authority was created to govern transport, consisting of a board of three members appointed by the Minister of Transport. Of the three members of each board, the chairmanship is a full-time job for a 7-year term. His two associates are part time officers who are appointed for 3-year terms.

Where a route overlaps two or more areas, it is necessary for the operator to obtain the "backing" or endorsement of each Traffic Area Commission in the areas affected before he will be permitted to operate in their respective bailiwicks.

Operators are required to obtain a certificate of mechanical fitness before entering a vehicle in public service; in addition they must file rate schedules, time schedules, and appropriate public liability security.

MR. Bowen tells us that the policy of the British law, so far as the duplication of service is concerned, is in favor of guarded monopoly rather than open competition. He quotes the following passage from the investigating commission's report:

"Generally, the commissioners shall aim at establishing an adequate passenger transport service in their area, creating what has been termed by several witnesses a "controlled monopoly," i. e., the provision of services by an adequate number of efficient undertakings, which, for the safeguarding of the interests of the public, would be subject to strict control."

The law itself lays the following injunction on the Traffic Area Commissioners with regard to determining what we, in America, would call the "convenience and necessity" for proposed bus service:

"In exercising their discretion to grant, or to refuse, a road service license in respect of any routes, and their discretion to attach conditions to any such license, the commission shall have regard to the following matters:

"1. The suitability of the routes on which a service may be provided under the license.

"2. The extent, if any, to which the needs of the proposed routes are already adequately served.

"3. The extent to which the proposed service is necessary or desirable in the public interest.

"4. The needs of the area as a whole in relation to traffic (including the provision of adequate, suitable, and efficient services, the elimination of unnecessary services and the provision of unremunerative services), and the coördination of all forms of passenger transport (including transport by

rail), and take into consideration any representations which may be made by persons who are already providing transport facilities along or near the routes, or any part thereof, or by any local authority in whose area any of the routes, or any part of any of the routes, is situated."

According to Mr. Bowen, appeals may be taken from the orders of the Traffic Area Commissioners to the Minister of Transport. The bill was acceptable to both the Conservative and Labor governments and passed without opposition.

What a pity that our Congress cannot absorb some of that coöperative spirit in dealing with Federal bus regulation!

Not alone with bus regulations are foreign countries concerned. Apparently they are having their trouble with the parking situation as well. On October 6, 1930, delegates to the Sixth International Road Congress convened at Washington, D. C., from more than fifty countries. The convention devoted much time to the problem of vehicular parking and traffic congestion.

The reports submitted by the delegates from Great Britain and the United States, where the parking problem is most acute, revealed the interesting fact that almost without exception the attitude toward parking by responsible authorities in both Great Britain and the United States is the same. They are agreed that it is an uneconomic use of street space and that sooner or later parking prohibition in congested districts must be enforced.

A detailed analysis of both the United States and English reports on this subject appeared in the *American Electric Railway Association Journal* (November, 1930).

The United States report was presented by Dr. Miller McClintock, Director, Albert Russel Erskine Bureau For Street Traffic Research, Harvard University.

The McClintock report, according to the *Journal*, recognizes the limited capacity of our American streets and the distinction between the right to move on and the right to park. The latter, it is stated, is a privilege and must be restricted and, if necessary, prohibited. The report further states that if traffic volume continues to increase in the next few years as it has in the past, it is to be anticipated that parking will be generally prohibited in the congested centers of all of the larger cities.

At present only one large American city applies the prohibition of parking throughout its central business district. That is the city of Chicago. Numerous benefits are reported to have resulted from this stimulated use of automobiles; decreased operating costs for transit and trucking companies. Last but not least it is reported that the increase in traffic volume has stimulated all forms of business.

The British report—the composite result of the labors of police officials, city planners, city engineers, and government officials—starts off in typical English fashion with a terse statement of the common law of England regarding the use of the streets; the same common law inherited by the states from mother England prior to the War of Independence. The report says:

> "In dealing with this question, the first and fundamental point to be borne in mind is that any person has, at common law, the right to use any highway or any part of any highway for the purpose of passing and repassing for legitimate travel, and accordingly it is an offense for a vehicle to remain thereon so as to cause inconvenience to other users of the highway or for an unreasonable time."

Pursuant to powers granted him by an Act of Parliament in 1924, called the London Traffic Act, it appears that the Minister of Transport accepted the recommendations of an advisory committee to study the parking situation in and about London and adopted regulations respecting vehicular parking both as to time and place. Two of these regulations adopted should be of interest to us because they are rather unusual.

The first is a provision that parked cars must be so left that they can be moved by manual power to enable vehicles to be moved where they are too closely parked or in case of an emergency on the street requiring such removal.

The second rule is that where a vehicle has been parked for the full limit of the time allowed for that particular location it cannot again occupy that spot for one hour.

A maximum time limit of two hours was fixed rather than three hours in order to prevent office workers from using the streets as garages every day by merely shifting their cars during their lunch period.

ANOTHER odd feature about British parking regulations is the "messenger" who is licensed by the police to see that parking regulations are carried out in a certain neighborhood. The "messenger" has no police authority and it is his duty merely to report parking violations to the nearest constable. He receives no salary but thrives upon the custom of motorists to give him a tip before leaving. The British report recognizes the deficiencies of the messenger system and urges that it should not be further extended.

Summarizing the British report, the *American Electric Railway Association Journal* states:

> "Under the Public Health Act of 1925, local authorities in Great Britain were given power to acquire land suitable for use as a parking place off the streets and quite a number of municipalities are using this method in preference to restricting the capacity of the streets by permitting street parking. A small charge is made in some cases for the use of off-street space. Both this plan and that previously described are, however, recognized as furnishing insufficient storage space for the demands and the report goes on to describe the British attitude towards public garages constructed by private capital."

THE policy of most cities in the United States towards the encouragement of privately owned garages as an aid in enforcing parking restrictions has not yet crystallized, so that what the British report says of this should be carefully noted for the day is not far off when downtown parking will be prohibited in nearly all large American cities. The report says:

> "It is to the provision of additional garages that the traffic authorities in large towns should look as a means of solving the problem due to the congestion caused by waiting vehicles, and care should be taken not to discourage the investment of capital for the construction of new garages upon up-to-date methods, and for the improvement and extension of the existing accommodation. It is, however, necessary that garage proprietors should charge only small sums for temporary accommodation, and fortunately much is being done in this direction in London and other large cities where proprietors have shown a disposition to charge particularly reasonable rates in respect of cars left during the business hours of the day. Charges can, of course, only be kept low so long as full economic use is made of a garage, and while cars are allowed to be left about the streets this object can not be achieved."

This leads one to the conclusion that ultimately the down-town garage will become so necessary to public interest that it will assume a public utility status calling for regulation of its rates, service, and territorial monopoly just as other warehouses are now regulated as utilities in many of our Western states.

—F. X. W.

HOW GREAT BRITAIN REGULATES. By Ivan Bowen. *Bus Transportation;* November, 1930.

PARKING REGULATION AS VIEWED BY ENGLISH AND AMERICAN AUTHORITIES. *American Electric Railway Association Journal;* November, 1930.

Other Articles Worth Reading

PUBLIC SERVICES AND THE PUBLIC. By Felix Frankfurter. *The Yale Review;* Autumn Number, 1930.

QUAINT ELECTRIC RATES. By Morris Llewellyn Cooke. *National Municipal Review;* pages 756–760. November, 1930.

WHAT READERS ASK

Out of the mail bag of the editors have come these questions; because they touch upon subjects of broad interest to those in the public utilities field, they have been selected for publication—together with the answers. What questions do *you* want to ask?

QUESTION

What is meant by the expression "reasonableness of rates as a whole"?

ANSWER

This expression means that the rates charged for various classes of service taken together shall be such as to produce a reasonable return on the present value of the utility property. Whatever theory of rate making may be adopted, whatever the rate base may be, the full body of rates is reasonable if it produces a fair return upon that base.

But individual rates may be unreasonable for the reason that some of the ratepayers may be overcharged for their service and some undercharged. Rate schedules are designed as far as possible to eliminate discrimination between various groups of ratepayers. It is impossible, however, absolutely to eliminate discrimination because the exact cost of serving each individual consumer or each group of consumers cannot be ascertained with mathematical accuracy. This is especially true in the case of railroad rates. But the aim is to eliminate unfair discrimination as far as possible.

QUESTION

Has there been any report from the Federal Trade Commission on the propaganda activities of the electrical industry? Is the testimony to be printed?

ANSWER

The Federal Trade Commission has not yet made its report on the "propaganda" or publicity phase of its investigation. That investigation, however, has been completed. The Commission is at present engaged in the investigation of the financial structure of power and gas utilities including holding companies.

The printed record of the public investigation is available to the public. This phase of the investigation comprises 18 volumes. There is an additional volume of exhibits.

QUESTION

Please tell me the percentage of cases involving public utility regulation questions which have gone to the Supreme Court through the channel of the Federal courts and through that of the state courts?

ANSWER

Roughly speaking half of the cases have gone up by way of the Federal courts and half by way of the state courts. Of 155 cases reported in full in Public Utilities Reports since 1915, 74 have come to the Supreme Court by way of the state courts if we include 4 from the District of Columbia.

It may be interesting to add that of these state and District of Columbia court cases 37 have been affirmed by the Supreme Court, 35 have been reversed, and 2 modified.

QUESTION

If the Federal Constitution as interpreted by the Supreme Court gives utility companies the right to earn a

return upon the present value of their property rather than upon their prudent investments in it, can a state avoid this provision by requiring utilities to enter into a contract to base their return upon prudent investment as a condition to doing business in the state as has been suggested in Massachusetts?

ANSWER

This is a question upon which doctors probably will disagree; but the probability is that utility companies could not be forced to waive constitutional rights in this way. A question of this sort went to the Supreme Court from California in 1926. (Frost *v.* California R. Commission, 271 U. S. 583, P.U.R.1926D, 483.) A California statute requiring private motor truck carriers to obtain certificates of convenience and necessity from the state commission and thereby submit themselves to regulation as a common carrier was held to violate the due process of law of the Federal Constitution. The state court held that while the state could not by mere legislative fiat or even by constitutional enactment convert a private carrier into a public carrier declared that the state had power to grant or altogether withhold from its citizens the privilege of using its public highways for the purpose of transacting private business thereon; and that, therefore, the legislature might grant the right on such conditions as it saw fit to impose.

It being admitted that a state could not convert a private carrier into a public character by direct act of the legislature, it was held by the Supreme Court that it could not do so by indirection. The court said:

"It would be a palpable incongruity to strike down an act of state legislation which, by words of express divestment, seeks to strip the citizen of rights guaranteed by the Federal Constitution, but to uphold an act by which the same result is accomplished under the guise of a surrender of a right in exchange for a valuable privilege which the state threatens otherwise to withhold. It is not necessary to challenge the proposition that, as a general rule, the state, having power to deny a privilege altogether, may grant it upon such conditions as it sees fit to impose. But the power of the state in that respect is not unlimited; and one of the limitations is that it may not impose conditions which require the relinquishment of constitutional rights. If the state may compel the surrender of one constitutional right as a condition of its favor, it may, in like manner, compel a surrender of all. It is inconceivable that guaranties embedded in the Constitution of the United States may thus be manipulated out of existence."

Three of the justices dissented; but not on the general proposition laid down by the court. They dissented on the ground that the particular legislation complained of in the case was within the power of the state.

One of the bills passed during the last session of the New York legislature which was among those vetoed by Governor Roosevelt would have permitted utility companies to contract with reference to the rate base; but the contracts were to be voluntary and not forced upon the utilities.

QUESTION

In some states personal liability is imposed upon shareholders of banks and insurance companies for the debts of the corporation. Are similar liabilities imposed upon shareholders of any public utility company?

ANSWER

Apparently no state has a law directed specifically at public utility corporations which imposes a liability for the debts of the corporation on the shareholder. There is, however, legislation in a few states which imposes individual liability on stockholders in corporations generally, including, of course, public utility corporations. In California, for example, the Constitution makes every stockholder of a corporation, or joint stock association, individually and personally liable for such portions of all of its debts and liabilities contracted or incurred during the time he was a stockholder as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock, or shares, of the corporation or association. A similar provision is found in the Kansas Constitution, which, however, excepts railroad corporations. In Minnesota double liability is imposed by the Constitution upon stockholders of corporations, excepting those organized for the purposes of carrying on any kind of manufacturing or mechanical business. In some of the other states, including Michigan, New York, and Wisconsin, an added liability is imposed upon stockholders for labor or services performed for the corporation. Then, too, there are laws imposing upon individuals liability for the debts of the corporation to the extent of amounts unpaid on stock.

The March of Events

The Charleston Convention

THIRTY-EIGHT commissions, including the Interstate Commerce Commission, were represented at the forty-second convention of the National Association of Railroad and Utilities Commissioners at Charleston, South Carolina. One hundred eight commissioners and staff members were registered, and guests attended in large numbers.

Extensive entertainment programs and business sessions occupied the commissioners from the morning of November 12th until late on November 14th. Noteworthy addresses were heard from commissioners, public officials, and representatives of the utility industry.

Federal regulation was thoroughly discussed and the convention readopted, in substance, the resolution which was adopted last year at Glacier Park expressing the opposition of the association to any form of Federal legislation which proposes the enlargement of Federal authority by the creation of new agencies, or the extension of the authority of present agencies, whereby the regulatory authority of the state commissions would be interfered with in fields in which they are now adequately functioning.

Federal regulation of interstate bus carriers was favored in a resolution endorsing the Parker-Couzens bus bill, now pending in the United States Senate, but endorsement was expressly withheld from "certain amendments" which have been attached to the bill.

Remedial legislation was favored by a resolution relating to the status of electric railways. The association asked Congress to amend the existing law in such fashion that an electric railway common carrier may be able, with respect to any matter, to determine whether it is subject to state or Federal jurisdiction, and so that state authorities may know to what extent they have the power and duty to enforce the laws of their respective states. The resolution declared the opinion of the association that the electric railways are, with few exceptions, local in character and that state jurisdiction thereover should be left undisturbed by Federal authority.

The special committee on telephone depreciation presented a resolution providing for regional special committees, which was adopted. The resolution referred to differences in climatic and other conditions affecting depreciation.

A resolution was adopted dealing with the Howell bill, wherein the association reaffirmed its former attitude respecting § 15a of the Interstate Commerce Act which it had condemned as uneconomic and unsound. The association expressed its opposition to the recapture provisions of the Howell bill. It was the opinion of the association that such changes in the law should be made as might be necessary to relieve the Interstate Commerce Commission from the duty to revalue the property of carriers subject to the Interstate Commerce Act "from time to time" and "in like manner" as such property is required to be valued under § 19a, but without in any way diminishing the power of the commission to keep informed as to the capital investment of the carriers and as to changes in the property of carriers.

The following officers of the association were elected: "Harvey H. Hannah, Tennessee, president; John J. Murphy, South Dakota, first vice-president; Hugh H. Williams, New Mexico, second vice-president; James B. Walker, New York, secretary; Clyde S. Bailey, Washington, D. C., assistant secretary; John E. Benton, Washington, D. C., general solicitor."

Richmond, Virginia, was chosen as the place for the 1931 convention.

Class Railroad Fares

THE continental system of rail travel, with three classes of accommodations and three fares, will be tried for six months by the Sante Fe & Western Pacific Railroads, beginning January 1st, according to an announcement reported in the Chicago *Tribune*. This is to stimulate travel between Chicago and the territory served by the railroad—Missouri, Arizona, and California. The *Tribune* says the rates are divided as follows:

"1. Tickets at existing fares, good in standard sleeping cars on all trains.

"2. One way tourist fares, about 20 per cent less than existing fares and good in tourist sleeping cars, but not standard sleepers.

"3. One way coach fares, about 20 per cent less than touring sleeping car fares and good only in coaches and chair cars.

"To illustrate the difference in price, a first class ticket from Chicago to any point in California costs $79.84; one good in tourist sleepers can be obtained for $65; and one good in coaches and chair cars can be bought for $50. The Pullman rate will also be low-

ered, a tourist sleeper to California selling for $12.75 as contrasted with the first class price of $23.63.

"It was explained by a representative of the lines that 'tourist' sleepers differ from the standard Pullman only in point of age and in recent improvements. They have, essentially, the same accommodations as the newer sleepers, it was said.

"This is the first time the system has been tried in the United States, the announcement stated. 'The plan,' it read, 'is to place the cost of railroad travel within the reach of all and is somewhat in line with the classification of ocean travel and that of foreign railroads.'"

Alabama

Rate Survey Started

A PRELIMINARY survey of power, light, gas, and water rates in southern cities is being made by O. L. Bunn, secretary of the Birmingham Chamber of Commerce, for the purpose of comparison with Birmingham rates. Letters have been sent to twenty southern cities including Nashville, Chattanooga, Atlanta, Mobile, New Orleans, Houston, and Dallas, says the Birmingham *Post*, inquiring about rates in those municipalities.

Replies thus far received, according to Mr. Bunn, indicate that Birmingham rates are not far out of line with other southern cities of comparable size, although he says it is too early to give an accurate comparison. A mere comparison of figures, says Mr. Bunn, will not mean anything with reference to whether or not Birmingham's rates are higher than other cities, as many things enter into rate making, such as peak loads and cost of manufacture, which may vary in the different cities. An expert is to analyze the figures when they are all in.

Arizona

Utility Savings on Oil Cost Passed to Consumers

AN estimated annual saving of $60,000 to residential and commercial electric power users of Tucson has been announced by Max Pooler, vice-president and general manager of the Tucson Gas, Electric Light & Power Company. This, it is said, has been made possible through the saving to the utility company of freight charges on the transportation of oil used to operate Diesel engines in the electric plant. The reduction, however, goes even beyond this saving.

The largest reduction is to domestic consumers for lighting and household appliances. The new residence lighting rates, with the $1 minimum monthly charge, include refrigerators and other appliances up to 1000 watts. Heretofore refrigerators required special wiring and a separate meter with a $3 monthly minimum charge.

The company is also putting into effect a combination rate for domestic lighting, refrigeration, ranges, water heaters, and the like all on one meter.

It has been explained that rural rates, which are now somewhat higher than the city rates, will also be reduced.

California

Vote on Fares, Operating Permit, and Local Board

A MAJORITY of the voters at the election in San Francisco defeated a charter amendment which would have limited fares on the Municipal Railway to 5 cents for all time. A campaign against the permanent fare was waged on the theory that losses in railway operation would have to be met by the taxpayers.

A charter amendment was approved by the voters which grants to the Market Street Railway Company a 25-year operating permit to take the place of expired and expiring franchises. The permit can be revoked at any time by the city purchasing the railway at a fair value. The San Francisco *Examiner* expresses the opinion that, notwithstanding concerted opposition against the permit, the voters were influenced by the company's promises of new lines and extensions. The company was unwilling to make these im-

provements when its right to operate was in jeopardy.

A proposal to create a municipal public utility commission to handle the city-owned utility properties in San Francisco was defeated.

Connecticut

Appeal from Taxi Meter Ruling Indicated

An appeal from an order of the Public Utilities Commission requiring all taxicab operators in New Haven, Bridgeport, Waterbury, New London, Meriden, and Hartford to equip their cabs with meters is in prospect, according to the Hartford *Times*. Representatives of the Connecticut Flat Rate Cab Association, says this paper, believe the order to be unfair because of the expense involved in installation and the short space of time given in which to do it.

At the commission hearing on October 6th those in favor of the uniform system of metered cabs in all the large cities far outnumbered those opposed to it. Those against represented a total of 91 authorized taxicabs, while those for the meters represented a total of 268 authorized taxicabs, in addition to 222 authorized cabs outside of the cities involved in the ruling. The commission decided that the method of charging by the taximeter was the best plan for the convenience, protection, and safety of taxicab passengers and the public. Cabs must be equipped with meters by January 1st, under the commission order.

Maine

Utilities Complain against Cost of Power

Five independent utilities have complained against the rates of the Maine Public Service Company, formerly the Gould Electric Company, for power purchased for resale. The commission is now engaged in what is described by the Lewiston *Journal* as one of the largest utility inventory and valuation projects it has ever undertaken.

Field work on the valuation of the electric property is now practically completed and the engineers have begun tabulating their notes for a valuation of the property inventoried.

The inventory of the Maine Public Service Company's properties, says the *Journal*, will include figures on its generating plant and power dams located over the line in New Brunswick, since it is from them that the power is brought into Maine for redistribution.

Missouri

Repaving after Abandonment of Track

The question of the obligation of the Public Service Company to bear part of the cost of replacing street paving after removal of abandoned street car tracks in St. Louis, says the St. Louis *Post-Dispatch*, was raised by City Counselor Muench at a hearing before Chairman Stahl of the state public service commission on November 3rd.

The company had applied for authority to abandon its tracks on Prairie avenue for a distance of ⅓ of a mile. L. C. Datz, chief engineer of the company, testified that these tracks never were part of a main line but were used in connection with a car barn which had been abandoned six months ago. The company, he said, now has no use for the tracks. The street is to be paved and the company desires to remove the tracks at that time.

Chairman Stahl, according to the *Post-Dispatch*, said that the commission had no authority to require the company to replace paving. The application was taken under advisement.

Union Officials Oppose One-Man Trolleys

A protest against the operation of one-man street cars by the St. Louis Public Service Company, according to the St. Louis *Star*, has been filed with the commission by of-

ficers of the street car men's union. They signed, however, as individual street car riders.

The petitioners contend that one-man cars are not so safe as those with two-men crews, and that wherever the company uses one-man cars it is discriminating in favor of patrons who ride on two-men cars. The many duties of the car operator are enumerated in the petition and it is asserted that the performance of all these duties by the one-man car operator, in addition to operating the controls or driving the car, makes each street car a menace to public safety, a dangerous instrumentality for the operator, and a menace to his safety and that of his passengers.

The further objection is interposed that when the commission authorized the company to charge present rate of fares two-men cars were operated exclusively and that the fares were based on that type of service.

Nebraska

Rural Extension Law Approved

An initiative law conferring the right upon cities and towns owning electric plants to extend service beyond the municipal borders was approved at the election on November 4th. This will make it possible to extend electric light and power lines from municipal plants to farmers and townspeople without taxes or bond issues. The municipal plants will have the power to make extensions and to pay for plants by pledging future earnings.

One provision of the bill is that no publicly-owned plant may be sold except upon approval of 60 per cent of the voters. Additionally, not to exceed $3000, or a dollar for each voter in a municipality, may be paid out to promote a sale of a municipally owned plant.

New Hampshire

Utility Policies Defended

Early in November answers to written interrogatories submitted by the state counsel to the New Hampshire Gas & Electric Company, in the investigation being conducted by the commission, were filed, and presentation of evidence in behalf of the utilities was begun.

John H. Logue, an accountant, first testified for the utilities. He stated that the present methods of handling the business of the New Hampshire companies saved them about $300 a month in salaries alone as compared with the former method of conducting the business independently. He expressed the opinion that the present method also offered an advantage of greater efficiency because it permitted the earlier closing of the books and consequent earlier advice to the officers and managers of the results of operation. The United States *Daily*, in a report of the proceedings, says:

"Mr. Logue testified that the rates of the New Hampshire Gas & Electric Company have been reduced 25 per cent since 1924 on the basis of a division of the total net revenue by the total of kilowatt hours sold. This represented a reduction of 3½ cents a kilowatt hour, he said.

"The witness said the gross revenue of the company for 1929, less operating expenses, depreciation, and taxes, was $253,101, or a return of 5.63 per cent on fixed and working capital. He also said that in 1929 payments of $24,115 were made to the J. G. White Management Corporation and W. S. Barstow, Inc., engineering specialists, and gave his opinion that these services were necessary to efficient management. He testified that if these payments had not been made the 1929 return would have been 6.18 per cent, but added that some expenditures would have been necessary for general management and a treasurer if the service companies had not been available.

"With reference to the writing up of book values, Mr. Logue testified that the write-up was made as of September, 1927, on direction of O. E. Wasser, of Ithaca, New York, in a letter dated October 5, 1927, but that the write-up was written off in December, 1927, at the direction of Mr. Golding on account of an advice from Mr. Clinton."

Before the introduction of this evidence Louis E. Wyman, special state counsel, submitted a list of specifications under which he said he felt the commission would be justified in finding efforts to avoid regulation and efforts to avoid the full performance of the duty of utilities; violations of New Hampshire laws; diversion of funds from the New Hampshire companies to the Associated Gas & Electric Company; and the stripping of the boards of directors of the New Hampshire utilities of management control.

New Jersey

Darkness and Phone Silence at Hotel Averted

A COURT order, according to the Newark *News*, has staved off darkness and phone silence at the Hotel Riviera in Newark. Efforts of Public Service Electric & Gas Company and the New Jersey Bell Telephone Company to discontinue service were blocked by a restraining order signed by vice chancellor Church.

The hotel is in the hands of receivers, and when the receivers failed to furnish guarantees for payment, the public utilities threatened to discontinue service. The telephone company had demanded a $1500 deposit and Public Service had demanded $2000. The receivers, it was said, had only $1300 on hand for all purposes.

The vice chancellor said that this was a most unusual case; that it was impossible for the receivers to comply with the demands of the utility companies, and it was not reasonable to shut off service. He said he wanted the attorney for the receivers to bring the case before the utilities commission with all speed. The vice chancellor said that he would not be justified in closing the hotel and turning the guests out into the street, and the service must be continued pending decision. He instructed the receivers to pay $250 to each company as an advance deposit on account, and to pay charges daily.

New York

Promotional Rates Vital to Gas Industry

WITHOUT a promotional form of rate to increase the uses of its commodity, the gas business soon would reach an unprofitable condition similar to that in which the street railways find themselves at present, Alten S. Miller, engineer, testified before the commission at a rehearing on the rates of the Brooklyn Borough Gas Company.

The witness asserted that gas sales per meter had been declining for the past ten years, and that a promotional rate is necessary if the business is to survive. Over objections by counsel for the Utility Consumers' League, the commission ruled that Mr. Miller might give his views as "opinion" testimony without supplying detailed facts to support his opinion, since he was qualified by many years' experience in the gas business. He supported his conclusions, however, by stating that there was rarely a demand for gas heaters in apartment houses because hot water was supplied by the landlord. He based his belief that gas sales had dropped also on the use of other means of cooking and ironing than by gas. The New York *Times* says:

"Chairman Milo R. Maltbie and Commissioner George R. Lunn asked the witness if a lower flat rate or block form of rate would not be promotional and stimulate the use of gas, and Mr. Miller held that a lower flat rate would be insufficient to bring a proper return on the $15,000,000 value of the company's property.

"The company is defending its present rates, including an initial charge of $1 for the first 200 cubic feet of gas used."

Landlords versus Tenants

THAT the reduced rate proposals of the New York Edison and associated electric companies would turn back thousands of customers to the companies and affect the revenue of the utilities which has been depleted by submetering concerns working with landlords, is one of the contentions of representatives of the real estate board, which is opposing the new rate schedules. Chairman Milo R. Maltbie, however, ruled at a hearing on November 14th against the admission at that time of evidence showing the cost to real estate owners of the installation of demand meters if the new rate plan should be approved. The question, he indicated, might be outside the jurisdiction of the state commission.

It was brought out at the hearings, says the New York *Times*, that the Diesel engine generating plant had been developed to the extent of becoming a real competitor of the Edison service. The possibility that private electric generating plants might be established by building owners to serve their tenants, if the new rates were approved, was suggested by opponents of the new rate schedules.

Clarence J. Shearn, counsel for the real estate board, at the hearing on November 12th took exception to an alleged statement by Matthew S. Sloan, president of the New York Electric Utilities, that submetering concerns were opposing reductions in the rates of the utilities. He continued, however, his opposition to the rate schedules and protested that the new rates would eliminate submetering concerns to the extent that a $6,000,000 profit to them would be transferred to the Edison Company.

Oregon

Vote to Authorize Public Power Districts

An amendment to the Constitution of Oregon was adopted by the voters on November 4th permitting the establishment of public power districts. Under this amendment districts may be created of territory, contiguous or otherwise, within one or more counties, and may consist of an incorporated municipality, or municipalities, with or without unincorporated territory, for the purpose of supplying water for domestic and municipal purposes, for the development of water power and electric energy, and for the distribution, disposal, and sale of water, water power, and electric energy.

The management of the district is placed in the hands of boards of directors, consisting of five members who are to be residents of the districts; and they would have power to call elections, levy taxes, issue securities, enter contracts, exercise the power of eminent domain, acquire and hold property necessary or incident to the business, and acquire, develop, or otherwise provide for the supply of water, water power, and electric energy.

Such a district would have the right to sell, distribute, or otherwise dispose of water, water power, and electric energy within or without the territory of such districts.

The legislature is given authority to enact supplementary legislation to carry out the purposes of the amendment.

Portland Electric Rates again Attacked

A new attack upon rates of the Portland Electric Power Company and the Northwestern Electric Company seems to be under way. Kenneth Harlan, public utility investigator, who assisted the city in its rate case which resulted in reduced rate schedules being ordered by the commission, declared that electric rates were too high in face of "the reduced rate base."

J. P. Newell, consulting engineer for the commission, is quoted in the Portland *News* as saying in regard to the rate base claim: "Not a word of truth in it; there has been no rate base reduction by the public service commission." He explained that the commission made a valuation of $22,000,000 in 1916 and in July of this year made another valuation of $45,000,000. On this basis the rates were established.

Objection has been made specifically to the demand rate. Some opponents of the rate schedules contend that the only fair rate method is to use the block-type rate so that "consumers can understand what they are getting." Mr. Newell, in speaking before the Portland council, said that the commission had taken the utilities to task for neglecting users' demands in applying the demand rate method. When this is neglected, he said, somebody suffers, and it should be corrected or individual users suffer.

Pennsylvania

Clarion River Project a Test of Power Commission Authority

A suit brought in the District of Columbia supreme court by the Clarion River Power Company against the Federal Power Commission has been termed comparable in importance to the St. Louis O'Fallon Railroad valuation case. It is a test case affecting the Power Commission's jurisdiction over hydroelectric projects.

The company holds a license from the Federal Commission for development on the Piney river in Pennsylvania. It seeks by injunction to halt a hearing the Power Commission had set preparatory to determining the actual net investment of the company in the project. The company claims that it spent $11,032,816, but William B. King, chief accountant for the commission, has recommended that $6,387,731 be cut from this amount, claiming that certain items have been improperly included.

Attorney General Schander, of Pennsylvania, has asked permission to intervene in the suit, and, in a brief which he filed, points out that the Water Power Act gives the Federal Government the right to recapture the plant at the expiration of the license, and further provides that if this right is waived, the state and its municipalities shall have preferential rights to take possession upon payment of the legitimate historical cost less depreciation. The state, he says, accordingly has a direct interest in sustaining the jurisdiction of the Power Commission to inquire into the investment.

A group of prominent attorneys headed by Professor Felix Frankfurter of Harvard has also asked permission to intervene in the suit as *amicus curiae* in behalf of electrical power consumers. They charge that the consumers' position in the suit has been jeopardized by the ruling of Attorney General Mitchell in a recent advisory opinion given to President Hoover on the Water Power Act, which, they say, cast doubt on its constitutionality.

Virginia

Zone Telephone Rates in Annexed Areas

THE Alexandria branch of the Chesapeake & Potomac Telephone Company, says the Washington *Star*, has under consideration a plan for doing away with the present system of charging for telephone service in recently annexed territory at an addition over the old territory rate for each quarter mile from the old line. In place of this there would be substituted a new zone covering practically all of the annexed territory with one rate, considerably reduced.

A new telephone exchange was originally scheduled to be built this year but it is now reported that this will not be done until 1934 because of the inability of the engineers of the company definitely to determine in which direction the city will grow. A dial system, it is said, will not be installed until the new exchange is built. Dials are now in use in the nearby Washington exchanges.

Washington

Generating Plant Purchased by Washington Gas & Electric Co.

THE Washington Gas & Electric Company, according to a report in the Tacoma *News-Tribune*, has purchased the electrical power plant at Longview from the Long-Bell Lumber Company. Negotiations for the purchase had been under way for several months. The *News-Tribune* says:

"The Washington Gas & Electric Company, which has the electric and water franchise for Longview, has heretofore purchased its power from the Long-Bell Lumber Company. Now it owns in entirety the plant which generates the electricity. The contract provides that the Long-Bell Lumber Company will continue to buy its power for both the Longview and Pyderwood operations from the Washington Gas & Electric Company. Fuel for the operation of the battery of huge boilers will continue to be supplied by the Long-Bell Lumber Company.

"The Longview plant is capable of generating 40,000 horsepower, Mr. Bowers said, and has many miles of transmission lines. The Long-Bell Company is one of the pioneers in using electric power in its logging operations. The plant is almost automatic, everything being handled by machinery. As the source of fuel is assured and the plant is efficient and economical, the Longview property is considered outstandingly successful."

Public Power District Bill Wins Approval

A BILL authorizing the creation of municipal corporations to be called public utility districts and to comprise an entire county, or any part of a county, and permitting the merger of two or more adjacent districts into one, was approved by the voters at a referendum on November 4th.

The people in a territory concerned are permitted to create a district which may construct and operate water works, irrigation systems, and power plants, with full power to purchase or condemn lands, to sell water or electricity, to issue securities, and to levy an annual tax not exceeding two mills in a year exclusive of interest and redemption of general obligation bonds.

A commission of three members elected for 3-year terms would be in charge.

Wisconsin

Protest against Hotel Phone Charges

A PROTEST, says the Milwaukee *Journal*, against the 10-cent charge for local telephone calls made by Milwaukee hotels and has been registered by the Milwaukee council of United Commercial Travelers.

A letter to the secretary of the Milwaukee Hotel Association is quoted in the following words:

"We believe that this extra charge of 5 cents for local calls is excessive and unjust. The commercial salesman of today, with a business depression, excessive railroad fares and hotel charges, is not in a receptive mood for any further increases in the cost of securing business.

"The country in general is going through a period of re-adjustment; wages are being lowered and the necessary commodities of life are coming down in price. This is a time for retrenchment, not increases."

The Latest Utility Rulings

CALIFORNIA COMMISSION: *Re City & Harbor Warehouse, Ltd. (Decision No. 22972, App. No. 16592.)* In granting authority for the operation of a warehouse on Mormon Island, the commission held that ancillary transportation service in a municipality in connection with warehouses is not within the commission's jurisdiction.

CALIFORNIA COMMISSION: *Hardie v. Eickerman. (Decision No. 22975, Case No. 2732.)* In dismissing a proceeding to require the operator of an unauthorized motor carrier service to show cause why he should not be punished for contempt, the commission said that to support an adjudication of contempt the evidence of violation of the commission's order should be clear and convincing.

CALIFORNIA COMMISSION: *Re Lower Lake Farmers' Telephone Association. (Decision 22980, App. No. 16828.)* In granting authority to the Pacific Telephone & Telegraph Company to purchase certain telephone properties of a so-called "farmers' association" the California commission was of the opinion that it lacked authority to require a telephone utility purchasing portions of a telephone system to acquire all lines of an association, or to require that members of the latter be reimbursed for advances made to the association.

ILLINOIS SUPREME COURT: *Indiana Harbor Belt Railroad Co. v. Illinois Commerce Commission. (No. 19737.)* An order of the Illinois commission reducing freight rates on crushed stone to prevent alleged undue discrimination against shippers outside of the Chicago switching district was affirmed. The court held that the commission in fixing such rates may properly consider, in connection with other evidence, commercial competition in the territory affected. *(See Utilities and the Public, page 763.)*

ILLINOIS SUPREME COURT: *Kewanee & Galva Railway Co. v. Illinois Commerce Commission. (No. 19443, 172 N. E. 706.)* On appeal by a railway company protesting against the granting of a motor carrier's certificate by the Illinois commission in territory surrounding Moline, Illinois, the order of the commission was set aside and the cause remanded for further proceedings. The appellate court was of the opinion that evidence did not sustain the commission's finding as to inadequate existing service.

MICHIGAN COMMISSION: *Re Dixie & Northern Air Line. (D–2301.)* Authority granted by the commission to the aviation company January 21, 1930, to issue a limited amount of securities was revoked upon a showing that the company had violated the terms of the commission's order, had failed to make regular reports or put its affairs and accounts in proper condition.

MISSOURI COMMISSION: *North Grand Improvement Association v. St. Louis Public Service Co. (Case No. 6932.)* A complaint by a civic organization of St. Louis against the rerouting of the Natural Bridge street car line in that city because of alleged inconvenience to certain residents was dismissed. The commission decided that the traction company had good and sufficient cause to reroute the line and had done so in what appeared to be the most practical manner with due regard to the adequacy of the service as a whole. The company had in this case followed the suggestion of the St. Louis Transit Survey Commission.

MISSOURI SUPREME COURT: *Public Service Commission v. Kansas City Power & Light Co. (No. 30518, 31 S. W. (2d) 67.)* A lower court judgment sustaining a petition by the Missouri commission to restrain the electric company from operating a 6-mile extension line without the commission's authority was affirmed. The court virtually decided that electrical utilities operating under authority of the commission cannot extend their lines into new territory without express permission of the commission. The right of the commission to eliminate inductive interference by power lines with telephone service was also sustained.

MISSOURI SUPREME COURT: *State ex rel. Henson v. Brown. (No. 29830, 31 S. W. (2d) 208.)* A statutory presumption created by the Missouri motor bus law that all carriers operating on a specified date were rendering a service required by public convenience and necessity without further proof was held not to be available to a subsequent buyer of a bus line from an operator having such a statutory privilege.

MONTANA COMMISSION: *Re Billings-Sheridan Motor-Freight Line. (Docket No. M. R. C. 34, Report and Order No. 1572.)* In order to place two rival communities, Billings, Montana, and Sheridan, Montana, on an equal footing in the matter of transportation service, the Montana commission has granted authority for motor freight service between Billings and all Montana points intermediate on the route to Sheridan which is competitive trading territory for both communities. The commission stated that the slight advantage which Billings heretofore had over Sheridan and certain of the towns in the territory involved in the matter of freight rates was more than offset by the

superior transportation facilities available out of Sheridan. (*See Utilities and the Public, page 763.*)

NEW JERSEY COMMISSION: *Re Public Service Coördinated Transport.* An application of the bus company for approval of a municipal consent properly and validly granted by the borough of South Plainfield for the extension of its route in South Plainfield, notwithstanding the subsequent protests from and contention by the borough that it had been misled by the company and had since attempted to revoke the consent but had not followed proper statutory procedure in doing so.

NEW JERSEY COURT OF ERRORS AND APPEALS: *Sixty-Seven South Munn, Inc. v. Board of Public Utility Commissioners.* This is apparently the first decision from the higher court of any state on the subject of submetering. The court upheld the refusal of a public utility to sell electricity to an apartment house owner for resale to tenants through submeters. The right of the New Jersey commission to refuse to compel the utility to render such service to landlords by selling current to them at wholesale rates through master meters was also sustained.

NEW MEXICO SUPREME COURT: *Becker v. Atchison, Topeka & Santa Fe Railway Co.* (*No. 3492, 291 Pac. 919.*) Freight rates on coal fixed by the New Mexico commission for another rail line were sustained, the court holding that the comparison of rates on the same commodity for similar distances in western country affords satisfactory evidence to determine the reasonableness of newly established rates.

NEW MEXICO SUPREME COURT: *San Juan Coal & Coke Co. v. Santa Fe, San Juan & Northern Railway Co.* (*No. 3498.*) Freight rates fixed by the New Mexico commission on coal were set aside when they were found to be below the cost of transportation for a carrier hauling coal almost exclusively lacking trade in other commodities to recoup the losses sustained.

PENNSYLVANIA COMMISSION: *Armstrong Cork Co. v. Bell Telephone Co.* The commission approved of an air line measurement for long distance telephone rates rather than actual route measurement. (*See Utilities and the Public, page 763.*)

RHODE ISLAND COMMISSION: *Re Weiner.* (*No. 938.*) The commission refused to interfere with the prior rights of two established bus line operators who occupy in turn a space for a city terminal in the heart of the congested district of the city of Providence by permission of the city traffic authorities, so as to permit a new applicant for authority to operate in interstate service to park his bus there for certain intervals during business hours. The commission withheld the certificate until the applicant should make provision for an acceptable parking place in the city of Providence. (*See Utilities and the Public, page 763.*)

UNITED STATES DISTRICT COURT FOR OHIO: *West Ohio Gas Co. v. Ohio Commission et al.* (*No. 874, 42 F. (2d) 899.*) A temporary injunction was granted to restrain the enforcement of an order of the Ohio commission establishing rates for natural gas in the village of Kenton. The commission's rates were formulated after the commission had disapproved of the company's proposed schedule, based upon the wholesale rates which it paid to a wholesale distributor. The court found that under the circumstances the West Ohio Gas Company was unable to obtain from any available source better wholesale rates than designated in its contract.

WISCONSIN COMMISSION: *Re North-West Telephone Co.* (*U-3992.*) Application of the telephone company for increased rates at its Wild Rose exchange area was granted with minor modifications. The commission in its opinion made some interesting observations on the effect which recent Federal decisions requiring depreciation allowances to be based on present fair value have upon depreciation accounts of companies purchasing utility properties whose useful life has already been partially consumed.

WISCONSIN COMMISSION: *Re Rural Telephone Co.* (*U-3964.*) The commission refused to make any determination on an application for increased telephone rates at Waupaca, Wis., where it appeared that the service would be subjected in the near future to great changes as to construction and operating methods and no comprehensive plan upon which the commission could base any finding for reasonable rates for the revised service had yet been divulged. The application was dismissed without prejudice for future action.

WISCONSIN COMMISSION: *North Side Fuel & Supply Co. v. Chicago & North Western Railway Co.* (*R-3829.*) In the absence of evidence refuting the validity of a contract between a railroad company and an industrial shipper, containing an apportionment of the expense of a spur track, the commission refused to determine what would be, independently of the contract, a just division of such expenses.

NOTE.—The cases above referred to will be published in full or abstracted in *Public Utilities Reports.*

The Utilities and the Public

Utility Accepts Commission Order but Rejects Commission's Opinion

SOMETHING new in the way of regulatory procedure seems to be occurring in the matter of the application of the New York Steam Corporation for authority to issue securities. Last January this company asked the New York commission for authority to issue stock calculated to yield around $5,600,000, to be spent for certain corporate purposes. Last September, the 23rd to be exact, the commission made an order authorizing the company to issue stock estimated to yield about $6,000,000.

If that had been all there was to the matter, everybody apparently would be happy and satisfied. But that was not all. Prior to the order, on September 9th, Chairman Maltbie handed down an opinion in the matter (P.U.R.1930E, 227), which indicated that he did not think the company's accounts were all they might be. This opinion received the concurrence of a majority of Chairman Maltbie's fellow commissioners and was duly registered as an opinion of the commission.

This left the company in a peculiar position. It was satisfied with the results obtained, but it did not like what Chairman Maltbie said about it. It had received substantially everything it had asked for except kind words. It did not want an appeal or even a rehearing, but it did want to show its objection to Chairman Maltbie's opinion. How could this be accomplished?

New York's public service commission law provides only for a rehearing to a dissatisfied party after an order of the commission has been entered. But it is silent as to how a party who has been granted its request might register its disapproval of what has been said by the commission.

Upon advice of counsel, the company finally determined to accept the order with all its conditions, but to show its disapproval of the opinion in the form of a document filed with the New York commission entitled "Exceptions and Objections of the New York Steam Corporation to the Opinion of September 9, 1930."

In the course of this document the company declares that the commission's opinion contains certain statements based on misapprehension of the facts and expressions of view which are questionable. The company claims that as a result of these observations in the commission's opinion, the former's interests are seriously prejudiced as well as the interests of its stockholders. The company alleges further that the commission's remarks have already had an adverse effect upon the previously favorable credit position occupied by the company.

The document specifically objects to seven conclusions of Chairman Maltbie's opinion and explains in detail its position with regard to each of the points described. For instance, its defense to the charge made in the commission's opinion that the corporation's capital accounts as of August 11, 1921, were misleading, was that the original entries of fixed capital on the books of the company were made not only in accordance with the public service commission law, but in compliance with very definite orders from the commission as to the manner in which such fixed capital should be determined and recorded.

The filing of such a document without a request for a rehearing and even while accepting the commission's order seems, as we said before, something

new. Just what action the commission will or can take in the matter is very doubtful. The final paragraphs of the exceptions and objections of the company read as follows:

> "The proceeding in this case has, by the commission's order, been continued on the records of the commission.
>
> "The corporation respectfully begs to reserve its rights and claims in respect to the matters to be determined by the commission by reason of such further proceedings, and to any other matters covered by the opinion and not herein specifically mentioned."

Probably the company is merely seeking to preserve future rights by making a matter of record its defense to the charges made in the commission's opinion. Otherwise, there is a possibility that an acceptance by the company of the commission's order might be hereafter construed as acquiescence in the allegations contained in the commission's opinion.

Air Line Measurement for Telephone Rates

SHOULD long distance telephone rates be measured "as the crow flies" or "as the poles stagger?" This is the interesting question answered in part at least by the Pennsylvania commission in dismissing a complaint against a new rate for special service filed by the Bell Telephone Company in the Keystone state.

True, the complaint does not involve the ordinary long distance rates for telephone service generally. As a matter of fact the rate had to do with the charge for "tie lines" or leased circuits. The Armstrong Cork Company was the complainant. Yet the view of the commission in this proceeding may have a possible bearing as a precedent for future cases involving long distance rates generally.

The Bell Company's former rate was based on route measurement and required anyone contracting for that type of service to pay $4 a mile for the actual route followed, with the understanding that the telephone company would use the shortest route over which spare facilities were available. In other words, two companies subscribing to the same service between the same points may have been paying different charges due to the routing of the facilities necessary to furnish the service. Between Harrisburg and Lancaster, for example, six different routes are available, no two being the same distance.

The Bell Company's new rate is $5 per mile based on "air line" measurement. The cork company attacked this as unjust and discriminatory, pointing out that air line mileage is only theoretical mileage and that messages will continue actually to travel via a route mileage involving operating costs in direct proportion to the actual length of line used.

In dismissing the complaint the commission stated:

> "The record further shows that the respondent has 161 contracts for this class of service and that in 71 instances the air-line method of measurement has resulted in increases, in 83 instances the air-line method of measurement has resulted in decreases, and in seven instances there is no change whatsoever. It is also stated that the purpose of respondent was not to increase its rates, but to maintain the same amount of gross revenue from this class of service."

From this the commission decided that this complainant had failed to show that the new rate was unjustly discriminatory or unduly preferential.

High Telephone Rates Called Confiscatory

SELDOM does one hear of utility rates so *high* as to be confiscatory. Usually the word "confiscatory" is used in connection with excessively low rates —rates which if continued in force would have the effect of appropriating

a utility's property without its consent and without equitable compensation. Nevertheless, it is sometimes argued that "confiscatory" can be used to denote utility rates that are higher than they should be.

The latest authority for this definition is the Indiana Public Service Commission, which is apparently of the opinion that it is a poor rule that will not work both ways. If excessively low rates have the effect of confiscating a utility's property, why do not excessively high rates have the effect of confiscating the ratepayer's property? There is a point, contends the Hoosier commission, to which rates of a public utility may be increased at which they become prohibitory and thereby confiscatory of the rights of the public, or more exactly, the ratepayers.

This observation came in the course of the commission's ruling denying the petition of the Southern Indiana Telephone & Telegraph Company for increased rates on some thirty rural exchanges.

This petition has certainly been tossed upon the troubled regulatory seas. When it was first filed last summer, the rural territory affected was in the throes (and still is for that matter) of a severe economic depression, resulting particularly from the protracted drought that desolated the crops of Indiana. The commission felt that it was neither the time nor the place for increased telephone rates. Patrons were so bad off that they would be compelled to give up the service rather than pay increased tariffs. The commission was of the opinion that the Southern Indiana Company ought to bear its share of the hard times and hold the petition in abeyance until conditions in the territory had improved.

The company did not share this belief, however, and started suit in Federal court to restrain the commission from interfering with the increase because of such "capricious" reasons. With this move the commission rescinded its former order and volunteered to consider the petition on its merits, pointing out that it was only trying to save the company from committing financial suicide or something very much like it, because the commission felt that more business would be lost by the rate increase than profits gained.

Of course, the Federal court dismissed the company's suit without opinion as to the issues raised, when it saw that the Indiana commission was willing to consider the company's petition on its merits. Then came the commission's decision denying the petition on its merits. The opinion states:

> "The commission, as a regulatory body," the order said, "owes to the utility and the public its unbiased judgment in the face of all relevant facts. There is a point to which rates may be reduced to bring about confiscation of property. There is a point to which rates may be increased to make them prohibitory and thereby confiscatory of the rights of the public.
>
> "Rates have been increased in some known instances within this state, and we think in some instances within this company's properties, that brought about so many withdrawals as to reduce rather than to increase the revenues of those exchanges.
>
> "We think that the present rates in force at these exchanges under economical management are ample to provide operating expenses, provide for a sufficient depreciation reserve fund, and pay a reasonable rate of return upon a fair value of these properties."

The commission took exception to several items in the company's alleged operating expenses including the salary of the president and refused to accept the company's operating expenses in 1929 as a typical year because of "startling increases" over operating expenses for 1928.

The question whether the property of consumers can be confiscated by high rates has been raised and it has sometimes been asserted that the rule as to confiscation works both ways. The argument against that theory is that the company is compelled to render service at the established rates, while the ratepayer's obligation to take the service is not compulsory. It is asserted that the ratepayer's property could not be confiscated unless he were forced by law to take the service.

Commissions Exercise Control over General Commercial Conditions

WHEN commissions were first created in this country they had fairly simple tasks to perform, such as requiring railroad companies to operate trains safely and on time and to stop rate discriminations between patrons. With the years the authority of the commission has not only broadened as to scope, including all known public utilities, but also as to the quality of its jurisdiction, including powers over rates, service, conservation, monopolies, rate cutting, and other odd regulatory jobs.

More recently there seems to be a tendency toward the exercise by the commissions of powers to control commercial competition generally in so far as the same can be affected by utility service. They are called upon to adjust relations between one class of customers and another class of customers; and indirectly between one industry and another industry, between one community and another community.

A specific instance of this new authority of the state commissions can be found in West Virginia's statute requiring the commission of that state to permit hydroelectric development only after a thorough investigation of the effect that the proposed operations will have on basic industries of the state, such as the coal business; and the effect on economic conditions generally and the welfare of the residents at large, whether they be patrons of a utility or plain citizens.

In the absence of such legislation a recent decision of the Illinois supreme court sustained an order of the commission of that state reducing freight rates on crushed stone to prevent alleged undue discrimination against shippers outside of the Chicago switching district. The court ruled that the commission in fixing carrier rates may properly consider in connection with other evidence commercial competition in the territory affected.

Still more recently the Montana commission awarded a certificate of convenience and necessity for motor carrier service that was frankly designed to place the cities of Billings and Sheridan on an equal footing in the matter of transportation service as to commercial relations with intermediate trading territory. It appears that heretofore a slight rail rate advantage held by Billings had been more than offset by superior transportation facilities available out of Sheridan. The new service was authorized in the interest of trade parity between the communities to be served.

Picked Out of the Daily News

AT the end of July fourteen subsidiaries of the National Electric Power Company, operating in fifteen eastern states, had 5,522 employees as investors in preferred stock in their own companies out of 6,832 employed, or 80.8 per cent.

THE Missouri commission has allowed the Southwestern Bell Telephone Company to place telephone service to college fraternity houses under business rates instead of under residence rates; it appears that the boys talked too long and too often for the company to make any profit from its service under the old residence rates.

Public Utilities Reports

COMPRISING THE DECISIONS, ORDERS, AND RECOMMENDATIONS OF COURTS AND COMMISSIONS

VOLUME 1930E NUMBER 5

Points of Special Interest

Titles and Index

TITLES

INDEX

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REPLACING other poles and individual lighting standards, Union Metal Heavy Duty Poles have transformed the appearance of San Pablo Avenue in Berkeley, California.

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DECEMBER

Reminders of Coming Events — **ALMANACK** — *Notable Events and Anniversaries*

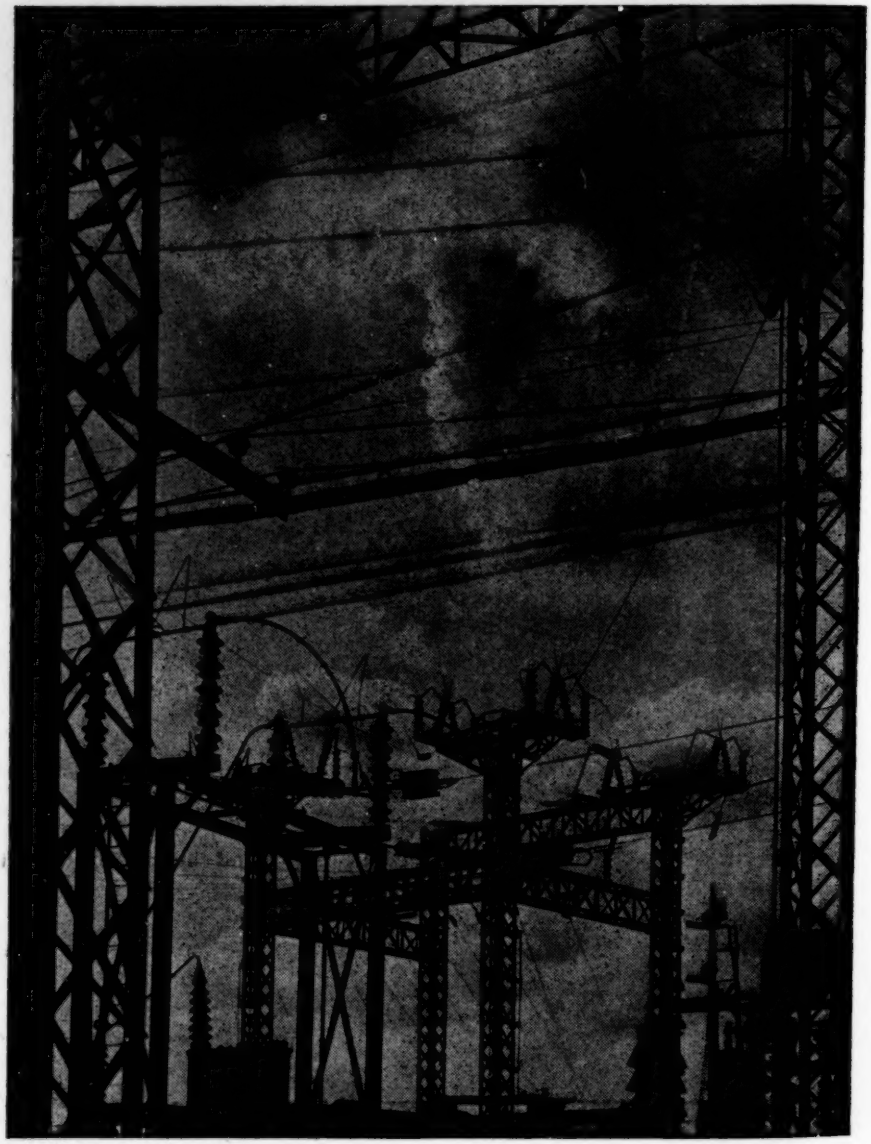
25	T*h*	The *"Best Friend of Charleston,"* a railroad locomotive constructed in England for use by the South Carolina Canal & Railroad Co., was put into regular service; 1830.
26	F	The U. S. Government took possession and control of the railroads of this country as a war measure, and W. G. McADOO was appointed Director General of Railroads; 1917.
27	S*a*	NICHOLAS ROOSEVELT, the inventor associated with FULTON in the introduction of steamboats, was born in New York; 1767.
28	S	The *"Schenectady Cabinet"* carried the first newspaper notice of the application to the N. Y. legislature for incorporating the Mohawk & Hudson Railroad Co.; 1825.
29	M	The Cleveland Electric Railway cut the street car fares on all of its lines to 3½ cents; 1906.
30	T*u*	The first subway to be operated in the Far East was formally opened in Tokyo, Japan, to the amazement of the citizens; 1927.
31	W	The human voice was carried across the Atlantic by radio for the first time when KDKA of Pittsburgh extended greetings to England; 1923.

JANUARY

1	T*h*	The State Corporation Commission of New Mexico was created; at the same time New Mexico became a state; 1912. ¶ *New Years Day.*
2	F	The *"New York Herald"* announced that the "first practical and fully successful test" of the transmission of pictures over telegraph wires was made in its offices; 1898.
3	S*a*	One of the first electrical generating machines—a ball of sulphur revolving under friction—was a toy devised by OTTO VAN GUERICKE, a German; (c) 1632.
4	S	A general strike of telegraph operators throughout the country was called, 1870. First simultaneous broadcasting by wire-connected radio stations; 1923.
5	M	GEORGE WASHINGTON unwittingly became an investor in a natural gas property when he purchased a tract near Charleston, W. Va.; 1775.
6	T*u*	A tremendous stride was taken in the development of the power industry when the steam turbine (invented in 1884), was applied to the generation of electricity; 1891.
7	W	E. H. HARRIMAN became president of the Union Pacific Railroad; 1904. The first commercial transatlantic radiophone service was instituted; 1927.

"He that invents a machine augments the power of a man and the well-being of mankind."

—HENRY WARD BEECHER



From a camera study by Wm. M. Rittase

TRANSMISSION

"By means of electricity, the world of matter has become a great nerve, vibrating thousands of miles in a breathless point of time."

—NATHANIEL HAWTHORNE